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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1329

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioner

v.

TEAMSTERS LOCAL 701, *et al.*, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioner*

v.

TEAMSTERS LOCAL 701, *et al., Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter "International Union") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered in this proceeding on November 17, 1975.

OPINIONS BELOW

The judgment order of the Court of Appeals (App. 1a-2a) and the opinion of the United States District Court for the District of New Jersey (App. 4a-22a) are not reported.

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JURISDICTION

The judgment of the Court of Appeals (App. 1a-2a) was entered on November 17, 1975. A timely petition for rehearing with suggestion for rehearing *en banc* was denied on December 16, 1975 (App. 3a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Whether a district court may, as a matter of unfettered discretion and without statement of reasons, waive an express requirement of a union constitution that internal remedies be exhausted prior to litigation of a contractual dispute between components of an international union.

STATUTE INVOLVED

This action arises under § 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185(a), which provides in pertinent part:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT

This litigation, brought against the International Union by one of the approximately 900 local labor organizations of which it is constituted, concerns one incident in a perennial intra-union dispute over the collective bargaining benefits to be received by Local

701's members. In 1970, respondent Local 701 accused the International Union of breach of an alleged undertaking to secure for Local 701's members monetary benefits greater than those secured for members of other locals in the nationwide and areawide contracts negotiated in that year. Instead of seeking redress under the International Constitution (see pp. 10-11, *infra*), Local 701 immediately filed suit against the International Union under Section 301 of the Labor-Management Relations Act. Judgment was entered for the amounts that Local 701 claimed its members would have received from their employers during the three-year contract period but for the alleged breach,[1] and the court of appeals affirmed in a brief "judgment order."

Petitioner seeks review of the judgment below only insofar as it affirmed the district court's denial of the motion to dismiss for failure to exhaust internal remedies.

1. The International Constitution

The Constitution of the International Union, like other union constitutions, is a comprehensive charter

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[1] In addition to the contract claim against the International Union that went to the jury, the complaint raised a variety of claims against the International Union, other local unions and the employers involved in the negotiations. The other defendants and most of the other claims were eliminated from the case on a motion to dismiss (see opinion at App. 4a-22a); a directed verdict was entered on a fraud claim; and a claim of breach of the duty of fair representation was severed and thereafter abandoned.

The individual respondents Swist and Freda filed a purported class action on behalf of Local 701's members one year after the Local itself had sued on the same cause of action. The class action was disallowed and the case was subsequently consolidated with Local 701's case. The verdict and judgment were in the amount of $108,380.59 for Local 701 and $72 for Swist and Freda (representing their individual pro rata shares as members).

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defining the relationships among its constituent bodies and their mutual rights and obligations, particularly in the collective bargaining context from which this litigation arises. It establishes an elaborate structure for the governance of the International Union itself and for the resolution of disputes. It also provides specifically for nationwide and areawide collective bargaining and for harmonization of differences as to the common negotiating positions to be taken. Pertinent provisions of the Constitution, as in effect at the relevant times, are set forth in full text as Appendix D, App. 23a-29a, *infra*.

The constitutional provisions relating to the governance of the International Union may be summarized as follows:

> (1) The International Convention, in which all locals are proportionally represented, is the "supreme governing authority" possessing plenary power (Art. III, Sec. 1). The International Convention adopts and amends the Constitution (Art. III, Sec. 9), and elects the International Union's officers. These include the General President, the General Vice President, the General Secretary-Treasurer and twelve Vice Presidents who are "as nearly as practicable [to] be distributed throughout the entire country." These officers constitute the General Executive Board (Art. IV, Secs. 1 & 2).
>
> (2) The General Executive Board has the general "authority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention," as well as "governing authority over the International Union and its subordinate bodies to the end of upholding the laws and policies of the Brotherhood as expressed

in this Constitution" (Art. IX, Sec. 1). The General President (whose powers were exercised by the General Vice President at the times pertinent to this litigation) has general supervisory power and the authority to decide questions of law and settle and determine grievances and disputes between meetings of the General Executive Board, all subject to appeal to the General Executive Board (Art. VI, Secs. 1(b) & 2(a)).

(3) There are a variety of specific procedures for the resolution of different types of intra-union dispute, including review by the General Executive Board and then by the International Convention. There is further a general requirement that "Every member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body * * * against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency against the International Union, any subordinate body or any officer or employee thereof." (Art. XII, Sec. 12(a)).

In addition to the general procedures for resolving disputes, there are two specific constitutional provisions with respect to intra-union conflicts in collective bargaining positions. Article XVI, Section 4(a) provides that

"If any Local Union believes that an area, multi-area or national, company-wide or industry-wide contract proposal will deprive its involved members of better existing conditions of general application to all such involved members of the Local Union it may appeal to the General Executive Board which shall have the final authority to de-

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> termine whether such alleged better general conditions shall be continued or shall yield to the overall gains of the proposed contract."

In any instance where one subordinate body is adversely affected by an agreement entered into by another subordinate body, Article XII, Sec. 11(d) further provides that

> "The General Executive Board shall also have the power to take such disciplinary action as it deems necessary after proper notice according to this Constitution in those cases where it finds that a subordinate body or its representatives have without good cause executed agreements which adversely affect members of this International Union within the jurisdiction of the particular Joint Council."

2. The Problems Relating to Local 701's Participation in Joint Collective Bargaining

Prior to 1967, Local 701 had not participated in nationwide or areawide collective bargaining, but had been permitted to negotiate separately with the employers in its New Jersey jurisdiction. The Local 701 agreement due to expire October 31, 1967, provided "welfare" benefits (*i.e.*, employer contributions to pension and health and welfare plans) superior to those enjoyed by the other Teamster locals in the New Jersey-New York Area; specifically, those benefits were to be at a rate ten cents per man-hour above those of the other locals by reason of an end-of-term cost of living adjustment unique to Local 701.

Efforts were made to include Local 701 in the nationwide and areawide negotiations for the 1967-1970 contract period, but Local 701 refused to participate.

The other locals proceeded to negotiate a National Master Freight Agreement and a New Jersey-New York Area Supplement as provided in the International Constitution, and the resulting agreements duly became effective as of September 1, 1967. Although these agreements were binding upon it under Article XVI, Section 4(a) of the Constitution, Local 701 remained adamant and brought suit in a New Jersey court to enjoin the requirement of adherence to the agreements. That suit was settled by a Memorandum of Understanding between Local 701 and the International Union (Plaintiffs' Exhibit D, executed October 10, 1967), which provided that Local 701 would accept the general agreements and would receive both the increases in welfare payments they provided (beginning on September 1) and the end-of-term increase provided in its former separate agreement (expiring October 31). The affected employers ultimately acceded to this double increase in benefits after negotiations with Local 701 and a strike against two of them. The result was to maintain the ten-cent welfare differential in favor of Local 701's members for the contract period expiring March 31, 1970.

The present litigation relates to Local 701's effort to perpetuate the same ten-cent differential (at a higher absolute level) for yet another contract period, from 1970 to 1973. When the National Master Freight Agreement and the New Jersey-New York Area Supplement came up for renegotiation, Local 701 once again sought to exclude itself. This time, however, Local 701 acceded to the pressure to comply with the International Constitution during the course of the negotiations with the employers, and the consideration it exacted was less clear than in the different circum-

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stances of 1967. On March 18, 1970, the International Union and Local 701 entered into an understanding (in the form of an exchange of correspondence, Plaintiffs' Exhibits W and Z) the pertinent conditions of which were as follows:

> "Any increases negotiated by the International Union with respect to pension or welfare contributions shall in the case of Local 701 be paid on top of the existing Local 701 welfare and pension contribution rate.
>
> * * * * *
>
> "Local 701's major concern is that it not lose any wages, hours or working conditions which are better than those contained in the National Master Freight Agreement and Supplements and further that its membership has the full advantage of all benefits negotiated by the International Union for the forthcoming contract so long as the International Union assures Local 701 that the wages, hours, and working condition benefits will be applied uniformly and in the case of economic items, on top of existing wage, pension and welfare contribution levels * * *."

This suit charges the International Union with a breach of the March 18, 1970 "contract".[2] Local 701's grievance arose out of the fact that while the joint agreements provided for uniform increments in all locals' preexisting levels of benefits, the New Jersey-New York Area locals other than 701 also obtained

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[2] Local 701 further contended that the International Union had continuing obligations under the 1967 Memorandum of Understanding, but the point was of no significance to the outcome since those obligations were alleged to be the same as the obligations created by the 1970 understanding.

separate "rider" agreements—apart from the National Master Freight Agreement and the Area Supplement—in which their employers agreed, in effect, to raise the level of their welfare benefits to the same level as was to be enjoyed by Local 701. The principal questions litigated below (other than the exhaustion question which we discuss in detail in the next part of the Statement) were (1) whether the agreement was intended to preserve a ten-cent differential or merely to assure that any increases provided by the general agreements would be added to Local 701's existing benefits; (2) whether the "equalization" riders were attributable to agents of the International Union as an element of the general negotiations or were the achievement of the other locals acting on their own and thus not forbidden by the agreement; (3) whether it would have been possible to maintain a ten-cent differential for Local 701's members even if the International Union had done everything it allegedly was required to do.[3]

The jury resolved all of these issues in Local 701's favor, finding (in the words of the instructions, tr. 1106) that the International Union "acting through its agent[s], servants or employees * * * assisted the other locals in the New York-New Jersey supplemental area in achieving equalization, and this violated the contract between Local 701 and the International * * *." It further awarded damages in the full amount claimed, thus accepting the proposition that all of the

[3] The damages claimed (and awarded) were in the full amount of ten cents for each man-hour worked by each Local 701 member during the 1970-73 contract period, less the amounts actually received from those employers whom Local 701 persuaded to restore the ten-cent differential in separate negotiations aided by a collateral strike.

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employers would have given Local 701's members a ten-cent premium but for the breach.[4]

3. The Circumstances Relating to Local 701's Failure To Exhaust Remedies Under the International Constitution

The welfare benefit issue underlying this litigation surfaced early in the 1970 negotiations, when the representatives of the locals other than 701 vociferously demanded equalization as a major bargaining goal. The testimony at the trial revealed that Local 701's president had known of these equalization demands throughout the negotiating period (tr. 265, 183-184). Nonetheless, it is undisputed that Local 701 did not utilize its right under Article XVI, Section 4(a) of the Constitution to appeal to the International General Executive Board for a determination whether its own "better general conditions shall be continued or shall yield to the overall gains of the proposed contract." Indeed, Local 701 substantially ignored invitations to participate in the Area negotiations (tr. 209-210) and shunned both the preliminary formulation of proposals and the discussions with the employers (tr. 260-266). It maintained this stance notwithstanding its statement in the agreement on which it sued that "Local 701 * * * wishes to fully comply with the provisions of the International Constitution and By-Laws * * *."

It is equally undisputed that at no time after the alleged breach of its understanding with the Interna-

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[4] The problems relating to Local 701's welfare benefits did not end with the 1970-73 contract period. Two suits are now pending in which Local 701 asserts essentially the same contentions with respect to the 1973-76 contract. *Teamsters Local Union No. 701* v. *International Brotherhood of Teamsters*, D.N.J. Civ. No. 74-1099; *Teamsters Local Union No. 701* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, D.N.J. Civ. No. 75-1763.

tional Union did Local 701 seek any remedy from the General Executive Board under its general judicial powers or seek to exercise its further right of appeal to the International Convention held in 1971. The record shows that the International Union specifically invited Local 701 to use the internal procedures available under the Constitution after the present dispute arose. A telegram sent by the General Vice President to the President of Local 701 on April 20, 1970, (ten days before the complaint was filed) stated that "it is the position of the International Union that if Local 701 feels itself aggrieved by any alleged acts of the International Union, there are applicable internal union procedures available to Local 701 to have any alleged complaint or violation heard and resolved. Of course any such complaint will be promptly processed."[5]

As we have noted, the district court denied the International Union's motion to dismiss the complaint for failure to exhaust intra-union remedies under the International Constitution.[6] While indicating some unexplained doubt as to the availability of internal remedies

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[5] See Affidavit in Support of Opposition of Defendant International Brotherhood of Teamsters to Plaintiff's Motion for Preliminary Relief, filed Aug. 12, 1970, at p. 16, and Exhibit 4 thereto. The General Vice President was at that time performing the powers and duties of the General President (*id.* p. 1) and accordingly had constitutional authority "to interpret the Constitution and laws of the International Union and to decide all questions of law thereunder" subject to appeal to the General Executive Board and to the Convention (Art. VI, Sec. 2(a)). This was, accordingly, an authoritative ruling that a remedy would be available to Local 701 under internal union procedures. See *Vestal* v. *Hoffa*, 451 F.2d 706 (6 Cir. 1971), *cert. denied*, 406 U.S. 934.

[6] The exhaustion point was again raised and rejected in the motion for judgment notwithstanding the verdict (tr. 1134).

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for consideration of Local 701's claim, the district court rested its decision fundamentally upon the proposition that "to press any internal remedies which may exist would prove futile and meaningless. Further, the Court by virtue of its discretion in this matter does not deem the exhaustion of intra-union remedies necessary or pre-requisite to invoking its jurisdiction" (App. 17a). The only suggestion of a reason why exhaustion would be "futile and meaningless" or should be excused as a matter of discretion appears in the court's recitation of Local 701's argument that "such appeal would be to the International, of whose acts the plaintiff would be complaining" (App. 16a).

The court of appeals' entire discussion of the exhaustion issues was as follows:

> "Whether a plaintiff will be required to exhaust internal union remedies prior to bringing a § 301 action is a matter within the sound discretion of the district court, *cf. Semancik* v. *UMW, District 5*, 466 F.2d 144 (3d Cir. 1972), and we find no abuse of discretion in excusing exhaustion in this case." [App. 2a]

Thus, the court of appeals apparently acknowledged the existence of internal remedies, holding that their exhaustion was properly excused as a matter of discretion notwithstanding the district court's failure to articulate any particularized reason for doing so.

REASONS FOR GRANTING THE WRIT

This Court has held that "[a]s a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must *attempt* use of the contract grievance procedure agreed upon by employer and un-

ion as the mode of redress." *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650, 652. So too, the Court has required employers to exhaust their contractual remedies as a condition for bringing suit, unless it was clear that those remedies were available only to unions and employees. *Drake Bakeries, Inc.* v. *Local 50 Bakery Workers,* 370 U.S. 254; *Local 721, Packinghouse Workers* v. *Needham Packing Co.,* 376 U.S. 247. Additionally, the Court has recognized and given effect to the Congressional policy which as a general rule requires union members to exhaust internal union remedies before asserting a judicial or administrative claim against a union, "to preserve the vitality of internal union mechanisms." *Hodgson* v. *Local 6799, United Steelworkers,* 403 U.S. 333, 340.

Except with respect to one specialized situation,[7] this Court has not, however, provided the lower courts with guidance as to the circumstances under which noncompliance with exhaustion requirements may be excused in intra-union litigation. In holding that such waiver is a matter of discretion for which particular reasons need not be given, the court below has articulated a standard so loose as to risk nullification of the exhaustion requirement. Whether such a standard is proper and, if not, what the criteria for waiver should be are important questions of labor law that should be settled by this Court.

1. The courts have properly held that exhaustion of internal remedies is peculiarly appropriate as a pre-

[7] It is established that an employee may sue his employer or his union without exhausting contractual remedies if the union has violated its duty of fair representation in processing a grievance against the employer. *Vaca* v. *Sipes,* 386 U.S. 171, 186; *Hines* v. *Anchor Motor Freight, Inc.,* No. 74-1025, 44 U. S. Law Week 4299, March 3, 1976.

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requisite to litigation by a local union against an international union with which it is affiliated. Thus, the Second Circuit directed summary judgment against a local union seeking to enforce an alleged work assignment agreement, because of the local's failure to comply with a constitutional exhaustion requirement similar to Article XIX, Section 12(a) of the International Constitution. *Local 33, International Hod Carriers Union* v. *Mason Tenders District Council*, 291 F.2d 496 (2 Cir. 1961). In *Parks* v. *International Brotherhood of Electrical Workers*, 314 F.2d 886, 924-925 (4 Cir. 1963), *cert. denied* 372 U.S. 976, the Fourth Circuit similarly applied the exhaustion requirement to a collective bargaining dispute between a local union and its international. While the requirement was held satisfied by an appeal to a body comparable to the General Executive Board—a step not taken in the present case—the court went on to approve the international's disciplinary measures on the merits for reasons identical to those underlying the exhaustion requirement. The court found "considerations of basic union policy and structure" involved in determining "how shall the power over collective bargaining be distributed within the labor organizations" and concluded that "Questions as to how relations between an international and its local might best be regulated are for internal settlement or for Congress, which possesses the legislative power. Judges lack that power even when they are convinced of the desirability of improvements in the law." 314 F.2d at 906. This Court has articulated essentially the same principle in the analogous context of union election litigation, referring to "the longstanding congressional policy against unnecessary governmental interferences with internal union affairs." *Hodgson* v.

Local 6799, United Steelworkers, supra, 403 U.S. at 338. See Cox, *The Role of Law in Preserving Union Democracy,* 72 Harv. L. Rev. 609, 615 (1959).

When, as here, the question in dispute relates to the meaning and effect of an ambiguous agreement affecting the intricate matters involved in joint collective bargaining, it is not only the general policies opposing governmental interference and favoring conservation of judicial resources that come into play. Equally important is the courts' need for expert assistance in interpreting union rules and practices and in properly focusing issues. See *Detroy* v. *American Guild of Variety Artists,* 286 F.2d 75, 79 (2 Cir. 1961), *cert. denied* 366 U.S. 929; *Buzzard* v. *Local Lodge 1040, International Association of Machinists,* 480 F.2d 35, 41-42 (9 Cir. 1973). And wholly apart from such policy considerations, any agreement among component bodies of this International Union is necessarily subject to the requirement of the International Constitution, governing all of their relationships, that

> "Every * * * Local Union * * * against whom adverse * * * decisions have been rendered or who claims to be aggrieved, shall be obligated to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court * * * against the International Union * * *."

See *International Association of Machinists* v. *Central Airlines, Inc.,* 372 U.S. 682, 695.

2. The rule of discretion enunciated and applied below is inconsistent with the principles applied by other lower courts in both intra-union contract cases and other cases where the exhaustion requirement applies. Thus, *Local Union 1219* v. *United Brotherhood*

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of Carpenters, 314 F. Supp. 148, 152 (D. Me. 1970), dismissed a local's suit against its parent union to enforce a jurisdictional agreement, holding that the failure to exhaust internal remedies was not excused where "[n]o facts have been shown which would justify the Court in assuming that the General Executive Board would not give full and fair consideration to plaintiff's position." The fact that the appeal was from action by the General President of the parent union properly did not move the court either in *Local Union 1219* or in *Johnson* v. *Rockhold,* 293 F. Supp. 1016, 1018 (E.D.N.Y 1968) (applying the analogous exhaustion requirement of § 101(a)(4) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(4)).[8]

Other courts of appeals have been careful to require specific factual justification for excusing noncompliance with exhaustion requirements. *Buzzard* v. *Local Lodge 1040, International Association of Machinists,* 480 F.2d 35, 41 (9 Cir. 1973), reversed a district court's decision excusing exhaustion where the issues involved the interrelationship between an international constitution and a collective bargaining agreement, holding that there was no "sufficient showing that the intra-union remedies available to plaintiffs would be futile or inadequate to resolve their claims." The court in

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[8] So also, the mere fact that the claim here was against the International Union could not excuse exhaustion. As we have noted, the authority of the General Executive Board is superior to that of any of the International Union's officers, including the General President or Vice President. The Board is chosen by the International Convention to provide broad geographical representation. No more than three of its fourteen members (General Vice President Fitzsimmons and Vice Presidents Trerotola and Calabrese) had any prior involvement in the Local 701 problem.

Farowitz v. *Associated Musicians of Greater New York, Local 802,* 330 F.2d 999, 1003 (2 Cir. 1964), an LMRDA case, noted with approval that the district court (though granting a preliminary injunction after being "thoroughly advised") "explicitly retained for trial the question whether further intraunion proceedings at this juncture would be futile." See also *Fingar* v. *Seaboard Air Line R.R.,* 277 F.2d 698, 701 (5 Cir. 1960).

Even in cases involving individual rights under the Labor-Management Reporting and Disclosure Act, there is no precedent of which we are aware for excusing exhaustion without factual inquiry into specific justifications. *Semancik* v. *United Mine Workers District #5,* 466 F.2d 144 (3 Cir. 1972), the only precedent cited by the court of appeals for its "sound discretion" principle involved harassment of members exercising free speech rights, and the court noted that "the courts are particularly solicitous when the right of free speech is at stake" (at 151). In that case, moreover, the court specifically noted not only the nature of the claims involved but also the crucial fact that plaintiffs' internal claim "would be heard by the very incumbent board whose reelection they had contested" (at 149).

In the present case, there was no factual showing whatever in support of a claim of futility or other excuse for failure to exhaust internal remedies. If exhaustion were not required under these circumstances —as the court of appeals held in leaving the matter to the district court's unfettered discretion—both the general exhaustion doctrine and specific contractual requirements such as that of Article XIX, Section 12(a) of the International Constitution would lose

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much of their practical significance in encouraging union autonomy and avoiding unnecessary litigation. This Court should correct the erroneous principle articulated and applied below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 1976

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 75-1303

TEAMSTERS LOCAL 701

v.

AAA TRUCKING CORP., *et al.*
(D.C. Civil No. 551-70)
BERNARD SWIST, *et al.*

v.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., *Appellant,*

(D.C. Civil No. 715-71)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Appellant.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued October 30, 1975

Before GIBBONS, Circuit Judge, MARKEY, Chief Judge, Court of Customs and Patent Appeals, WEIS, Circuit Judge

Judgment Order

The International Brotherhood of Teamsters appeals from a jury verdict awarding plaintiff Local 701 $108,380.59 in damages for breach of contract. The issues raised in this appeal concern:

1. the jurisdiction of the district court to entertain this suit;

2. whether Local 701's failure to exhaust contractual grievance procedures rendered this suit premature;

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3. the sufficiency of the evidence to support the damage award; and

4. the adequacy of the court's charge on the question of damages.

We find that this suit in the district court for violation of a "contrac[t]" between "labor organizations" is authorized by § 301(a) of the Labor Management Relations Act, as amended, 29 U.S.C. § 185(a). Whether a plaintiff will be required to exhaust internal union remedies prior to bringing a § 301 action is a matter within the sound discretion of the district court, *cf. Semancik* v. *UMW, District 5*, 466 F.2d 144 (3d Cir. 1972), and we find no abuse of discretion in excusing exhaustion in this case. We also find that the evidence was sufficient to sustain the damage award, and that the trial judge adequately instructed the jury as to the law of damages applicable to the case.

It is therefore ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed. Costs taxed in favor of Local 701.

By the Court,

/s/ JOHN J. GIBBONS
Circuit Judge

Attest

/s/ THOMAS F. QUINN
Thomas F. Quinn
Clerk

Dated: Nov. 17, 1975

Certified as a true copy and issued in lieu
of a formal mandate on December 24, 1975.
Test: THOMAS F. QUINN
Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 75-1303

TEAMSTERS LOCAL 701
v.
AAA TRUCKING CORP., *et al.*
(D.C. Civil No. 551-70)

BERNARD SWIST, *et al.*
v.
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., *Appellant,*

(D.C. Civil No. 715-71)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA.

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, MARKEY, Chief Judge, Court of Customs and Patent Appeals, WEIS and GARTH, Circuit Judges

The petition for rehearing filed by Appellant

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ JOHN J. GIBBONS
John J. Gibbons
Judge

Dated: December 16, 1975

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NOT FOR PUBLICATION

APPENDIX C

[Filed Nov. 6, 1970]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 551-70

TEAMSTERS LOCAL 701, *Plaintiff*,

v.

AAA TRUCKING CORP., ET AL., *Defendants*.

On Motion To Dismiss Complaint

OPINION

• • • • • • • • • • •

WORTENDYKE, *Senior District Judge:*

The plaintiff (local) is an unincorporated labor organization affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (International).

Plaintiff, in its five-count complaint against International and numerous other Locals affiliated therewith and various employers of members of the plaintiff seeks damages and injunctive relief; more particularly restraint of defendant International from taking any action to control the collective bargaining rights of plaintiff Local.

COMPLAINT

As already stated the complaint in this action is in five counts. The first count consists of 59 numbered paragraphs. Each of the succeeding counts incorporates by reference the allegations of the first count. Scattered among the allegations of the complaint are references to annexed exhibits obviously intended to be supportive of the allegations in connection with which the exhibits are cited. In substance, therefore, the complaint presents not only alle-

gations but evidence of events upon which they are predicated. By far the allegations of the first count, together with the exhibits cited therein, are the most numerous, most complicated and completely basic to the allegations thereof and of the succeeding counts. It becomes necessary therefore to summarize the first count of the complaint.

The pleader predicates jurisdiction upon alleged diversity of citizenship, upon Section 301(a) of the Taft-Hartley Act, 29 U.S.C. § 185(a), upon Sections 1 and 2 of the Sherman Anti-Trust Act, 15 U.S.C. §§ 1 and 2, and upon Title I of the Landrum-Griffin Act, 29 U.S.C. § 411, those federal acts are coupled with a common law charge of "conspiracy, fraud, restraining of trade, tortuous (sic), interference with advantageous business relations and contracts, breach of contracts, prima facie torts, * * *".

It is alleged that Middlesex Motor Freight Carriers Association is an association of employers employing members of the plaintiff Local 701 and others within its jurisdiction. It is also alleged to be the collective bargaining representative of approximately 81 employers having collective bargaining relationships with the Local.

The pleaded narrative then reverts to September 11, 1967 when, it is recited, plaintiff Local instituted an action in the Superior Court of New Jersey; a copy of the complaint therein is annexed, as Exhibit B, to the complaint in the instant action. That exhibit is a copy of a verified complaint in the Chancery Division of the Superior Court of New Jersey brought by Local 701, plaintiff herein, against International, one of the defendants herein. In that complaint, consisting of four counts, the Local sought injunctive relief against International, against requiring the Local to execute a power of attorney, against acting as an agent of plaintiff Local in negotiations for a collective bargaining contract, against transferring the bargaining rights of members of the Local and against engaging in any ac-

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tivities which would substitute the International as the bargaining agent for the Local. Mandatory injunctive relief against International was sought to restrain the taking of any action against Local until the vote had been taken pursuant to Article XVI, Section 4(a) of the International Constitution.

Count II of the New Jersey complaint recites provisions of the Constitution of the Local, approved by the International, including provisions of Article 24 to the effect that no agreement or contract should be binding upon the Local Union unless executed and delivered by its duly authorized officers. It further alleged that the International was not a party to collective bargaining agreements theretofore negotiated by the Local and that the International had consistently assured the Local that it would never be required to participate in area-wide or national negotiations, that Local should abide by the Constitution; but, that the Local has "serious doubt as to whether the provisions of Article XVI, Section 4(a) * * * have been complied with, and have been threatened on one hand by Trusteeship of the International Union if they do not follow the directive of the Interational Union, and on the other hand with action resulting from failure to comply with directive of the members of Local 701 by members of Local 701." Accordingly the Local sought all of the relief requested in Count I and declaratory relief respecting the obligation of the Local to surrender its bargaining rights to the International.

The remaining counts of the New Jersey complaint, annexed as "Exhibit B", elaborate upon and reiterate the preceding allegations, seek injunctive and declaratory relief and charge that the International had deprived the Local of collective bargaining rights with which the International had interfered.

Reverting to the first count of the complaint in the instant action it is therein alleged that on or about October

10, 1967, the Local and the International entered into a "Memorandum of Understanding" by virtue of which the various differences existing between the International and the Local were resolved, and that, on September 13, 1967, the Local permitted the International to negotiate on its behalf the provisions of the Master Freight Agreement, and, in addition, a supplemental agreement conforming to the provisions of the "Memorandum of Understanding" (copy annexed to the instant complaint). That "Memorandum" provided in part as follows:

> "5(a). Settlement of Litigation
> The International will not execute an Agreement on behalf of Local 701 which will not contain all of the provisions contained in this Rider.
>
> (b). Local 701 will withdraw all litigation now pending in the various Federal and State Courts and before the National Labor Relations Board. This understanding will be read into the record of the case pending before the Superior Court of New Jersey."

The "Memorandum" was dated October 10, 1967, and signed in behalf of Local 701 and of the International (Exhibit D).

In the action brought in the New Jersey Chancery Division an Order to Show Cause and temporary restraining Order was obtained on September 11, 1967, in accordance with the prayers for relief in the complaint; and, it was the above-stated "Memorandum of Understanding" which embodied the agreement between the parties terminating that litigation. That agreement was approved by the Judge of that State Court and read into the record of the proceedings therein.

It is further alleged in the instant complaint that the area freight agreements negotiated with respect to Local 701 were due to expire on March 31, 1970, and that on

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July 24, 1969, plaintiff was requested by the International to submit a summation for contract proposals. A copy of that notification from the International is also annexed to the present complaint as Exhibit E.

On January 12, 1970, International wrote to the President of Local requesting copies of contracts between the Local "covering over-the-road, city cartage and/or dock operations". The same letter instructed the Local not to renew any such contracts without the prior approval of International, and stated that the "Local Union and the involved Employers shall become parties to the National Master Freight Agreement, and the New Jersey-New York Supplement thereto, if the work involved comes within the operations covered by those Agreements." In this connection the attention of the Local was called to the provisions of Article XII, Section 11(a), (b), (c) and (d) and Article XVI, Section 4, of the International Constitution. (Exhibit K). To the foregoing letter from International the Local responded by letter dated January 22, 1970 (Exhibit L) which stated that:

> "• • • it was clearly established by representatives of the International Union, our attorneys and representatives of Local 701 that in fact, there was no contract and to date, none has been totally compiled by the International Union on our behalf covering those points ratified by our members under the mail referendum as well as those points protected under the memorandum of Settlement approved by Judge Matthews."
>
> "• • • Local 701 cannot tell any employer that they must become parties to the National Master Freight Agreement or the New York-New Jersey Supplement thereto. We have been advised by our attorneys, in view of the course of events which took place some three years ago when the same question was raised, that serious consequences, along with damages, could flow to Local 701 particularly in view of the fact that our membership has mandated certain instructions to the Executive Board of this Local Union."

The same letter expressed emphatic disapproval of the content of the letter from the International which had evoked that response. The letter of February 3, 1970 (Exhibit N) from the International to the Local warned that the International was obliged to assure compliance with its Constitution, and that, if the members of the Local were permitted to vote to override those provisions, the Local President would be held "responsible if further action is required by the International * * *." The correspondence between the Local and International became thereafter progressively recriminatory.

Ultimately, counsel for the Local confirmed by letter that which had been agreed upon with International, by way of a telephone conversation, that any wage increase negotiated by International "be, in the case of Local 701, applied on top of the existing wage levels"; that any increases negotiated by International with respect to pension or welfare contributions shall be in the case of Local 701 "paid on top of the existing Local 701 welfare and pension contribution rate"; that any additional monies made available from the Cost of Living Index should "be applied uniformly throughout the entire Country"; and that "the agreement * * * between the International Union and Local 701, dated October 13, 1967, does not have to be renegotiated since it is in full force and effect and, therefore, automatically applies at this time." (Exhibit W).

The General Vice President of International advised the President of the Local (Exhibit X) that the letter from the attorney for the Local dated March 13, 1970 adequately summarized the contents of the General Vice President's letter on the application of the increases to be negotiated for the new agreement "including the application of the proceeds of the cost of living article during the life of the agreement." The Local was therefore requested to countersign the General Vice President's letter and return it

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to him. The Local considered this letter from International to be a conditional response to the agreement as set forth in Local's letter of March 13, 1970, refused to countersign said letter and instituted suit.

Apparently an action was brought by the Local against the International which was dismissed by the Local in consequence of various negotiation conferences which resulted in International's unconditional agreement to the provisions of Local's March 13, 1970 letter as evidenced by a telegram from the General Vice President to the President of the Local, dated March 18, 1970, confirming that:

> "(1) Mr. Friedland's letter of March 13, 1970 represents our complete agreement as to the matters contained therein;
>
> (2) Our understanding does not in any way apply to garage, maintenance or clerical employees. This telegram is being sent pursuant to an agreement reached during a telephone conference call on March 18, 1970 in which you, Mr. Jacob Friedland and Mr. Bartosic participated that no later than March 23, 1970 Local 701 will dismiss the lawsuit which it has instituted against the International Union due to a misunderstanding as to the status of negotiations." (Exhibit Z).

Paragraph 32 of the first count of the complaint alleges that, "Upon receipt of the aforesaid telegram Local 701 withdrew its lawsuit, withdrew all its demands upon the employers and the International that it be permitted to negotiate its own collective bargaining agreements, and relied completely upon the International, the National Over-the-Road and City Cartage Policy Negotiating Committee, its sister teamster locals, and the other defendants herein, in the negotiations of new collective bargaining Master Area Supplements and Riders."

The Local advised the Middlesex Freight Carriers Association on March 23, 1970 that the dispute between the International and the Local "has been completely resolved and a full understanding reached." However, not even that acknowledgement eliminated the differences between the Local and the International. The complaint goes on to allege that on April 7, 1970 the International informed the Local that "an Agreement had been reached on monetary items and left only 'area supplements to be completed', * * *." Two days later, according to the complaint, Samuel Provenzano, President of Local 560, and a representative of the International, notified the President of Local 701 that the latter would have to agree to accept less of a monetary package than other locals in the New Jersey-New York area were receiving and that a "spokesman for the North Jersey Metropolitan Locals advised that all New Jersey-New York Locals had combined to oppose Local 701, and would not support in the future any legitimate picket lines [and] would strike any employer who agreed to give Local 701 the same wage increases and pensions and welfare increases being negotiated by other Teamsters Locals in the North Jersey area." The fat was again in the fire, and Local 701 responded in its "confidential" hand-delivered letter of April 9, 1970 (Exhibit DD). That letter was addressed "To All North Jersey-Metropolitan Area Freight Locals Att: Mr. Sam Provenzano, Spokesman," and in that letter the Local President stated in part that:

> "Our members will not take less for your benefit! As far as any help, let the record be clear, as I told you, you never gave us any help and in fact, you ran down a legitimate 'sanctioned' picket line involving Transcon!
>
> * * * I want to respond to your implied coercement to make our members take less than what the International has already agreed to protect for us. We will not depart or give up the independently negotiated 10¢ which we got for ourselves * * * without your aid, or anybody else's for the matter."

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From this point on the first count of the complaint alleges a conspiracy on the part of the labor union defendants to threaten employers with economic sanctions who had collective bargaining agreements with Local 701. Plaintiff, while admitting that the International conformed to its agreements with the Local in 1967, despite the complaints of many New Jersey Locals "that Local 701 was thereby able to maintain certain monetary differential advantages over other local unions in the New Jersey-New York area," alleges that now the International aided and abetted certain local unions in a direct attempt to break and undermine the International's agreements with the plaintiff Local and permitted certain favored locals to obtain collective bargaining agreements containing better working conditions than those negotiated by International for and on behalf of Local 701. It is further charged that other defendant locals conspired with International and with International Freight Negotiating Committee to impose upon Local 701 a collective bargaining contract providing for wages, hours and working conditions less favorable than those obtained by the other defendant locals.

We need not be presently concerned with the generalized accusatory and conclusory allegations in the first count of the complaint. Suffice it to say that they may be summed up in the accusation that the International, its General Vice President and its General Executive Board acquiesced in the claimed discriminatory conduct to the disadvantage of the plaintiff Local and demonstrated their inability to take any action to protect Local 701 and the rights of its members.

Accordingly, plaintiff Local now demands judgment against all of the defendants for punitive and compensatory damages, the appointment of a Receiver for the International Union, injunctive relief, costs and attorneys fees.

The second count alleges that International conspired with the other defendants to eliminate marginal small

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companies and others from the trucking industry for the purpose of destroying Local 701, and to place control of the trucking commerce in the hands of a few carriers, thereby destroying competition. As parts of the conspiracy it is alleged by the plaintiff that the defendants' nefarious agreement would impose "leapfrogging economic exactions upon certain employers in the event Local 701 was successful in obtaining monetary increases for its members," and that Local Unions who were members of the conspiracy threatened various employers with economic sanctions in the event that said employers entered into or continued collective bargaining relationships which resulted in more advantageous working conditions and hours for Local 701 members employed in the general trucking industry. Similar relief is sought by the plaintiff in the second count to that prayed for in the first count. Indeed the relief sought in each of the five counts of the present complaint is similar.

JURISDICTION

Defendant International has moved the court for a dismissal of the complaint upon the following grounds:

1. Lack of diversity jurisdiction under 28 U.S.C. § 1332;
2. Failure to state a claim under Title I of the Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), 29 U.S.C. § 401 et seq.;
3. Failure to state a claim cognizable under the Sherman Anti-Trust Act, 15 U.S.C. § 1 et seq.;
4. Failure to state a claim under Section 301 of the National Labor Relations Act, 29 U.S.C. § 185;
5. Failure of plaintiff to exhaust its internal union remedies;
6. Exclusiveness of jurisdiction in the National Labor Relations Board over the subject matter of this action.

Upon the argument of the present motion plaintiff abandoned its allegations of diversity jurisdiction since there is

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obviously no diversity between plaintiff and all of the defendants. International is a labor organization consisting of approximately 900 affiliated subordinate bodies and comprising 2,000,000 members situated in every state of the United States, including New Jersey. Thus, the International, which is deemed to possess the citizenship of each of its members, is a citizen of every State of the United States for purposes of diversity. See, *United Steelworkers* v. *R. H. Bouligny, Inc.*, 382 U.S. 145 (1965).

Plaintiff fails to state a claim cognizable under either Section 101(a)(1) or 101(a)(2) of the Landrum-Griffin Act, 29 U.S.C. § 411. Those sections do not apply to the relationship between the parent union and its subordinate locals, but only prescribe the rights of individual union members enumerated therein. *Calhoon* v. *Harvey*, 379 U.S. 134 (1964). The only rights protected by Section 101(a)(1) are those expressly enumerated in the section, which excludes implied rights. Local 701 cannot therefore bring an action on behalf of its members to protect rights granted them under Section 101(a)(1) which have not been violated. *Mamula* v. *United States Steelworkers*, 304 F.2d 108 (3rd Cir., 1962) cert. den. 371 U.S. 823 (1962); *Cleveland Orchestra Committee* v. *Cleveland Federation of Musicians*, 303 F.2d 229 (6th Cir., 1962). Section 101(a)(2) protects the rights of union members "* * * to meet and assemble freely with other members; and to express any views, arguments or opinions; * * *". The complaint does not charge violation of those rights.

Accordingly, Count III of the Complaint, which is predicated upon jurisdiction under Title I of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(1) and (a)(2), is stricken.

The complaint in this case fails to state a claim cognizable under the Sherman Anti-Trust Act. Section 16 of the Clayton Act provides that "the labor of a human being is not a commodity or article of commerce." 15 U.S.C. § 17

(1964). Accordingly, plaintiff Local is not engaged in trade or commerce within the purview of the Sherman Act. *United Brick and Clay Workers* v. *Robinson Clay Products Co.*, 64 F. Supp. 872 (D.C. Ohio, 1946); *United Brick & Clay Workers* v. *Junction City Clay Co.*, 158 F.2d 552 (6th Cir., 1946). Although a labor organization may forfeit its antitrust immunity when it conspires with a group of employers to restrain trade, *United Mineworkers* v. *Pennington*, 381 U.S. 657 (1965), such a conspiracy must be directed against a commercial competitor in order to violate the antitrust law. Union activity resulting in the elimination of wage competition "is not the kind of restraint Congress intended the Sherman Act to proscribe," notwithstanding its resultant effect on the product market. *Pennington, supra,* at page 664; *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469 (1940). Moreover, plaintiff is not engaged in commerce as contemplated by the Sherman Act. Therefore, plaintiff lacks standing to complain that International was a party to a conspiracy aimed at forcing small trucking companies out of business. There is no allegation that Local 701 or its members have been directly or proximately injured by the alleged conspiracy.

Accordingly, Count II of the Complaint, which is predicated upon jurisdiction under the Sherman Anti-Trust Act, 15 U.S.C. § 1 et seq., is stricken.

Defendants' claim that this action should be dismissed, since plaintiff has failed to exhaust its internal union remedies, is without merit. An inspection of the International Constitution discloses various remedies available within the union to settle a grievance asserted against a subordinate body of the International, e.g. a member or officer of a Local Union, a Local Union or a Joint Council. The Constitution provides for an appeals process with the foreclosure of union remedies when said appeal is presented at the National Convention. Despite the quite orderly and judicious trial and appeal procedure provided, a right of

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action by a subordinate body against the International itself within that framework is not evident.

It would appear from the complaint filed herein that plaintiff's grievance was with the International. The alleged contractual relationship asserted was between the Local and the International, and its alleged subsequent breach being an act of the International. Plaintiff contends that to force it through an avenue of internal union remedies, which path is not quite clear, would be futile and meaningless since such appeal would be to the International, of whose acts the plaintiff would be complaining.

The doctrine of exhaustion of intra-union remedies is one founded in the common law and developed on a case by case basis until it was preserved by statute, 29 U.S.C. § 411(a)(4). However, it was not intended that this doctrine be mandatory. The provision in the statute pertaining to the docrine of intra-union exhaustion was incorporated therein to preserve this doctrine as it had developed in the courts, lest it otherwise appear that it was Congress' intention to abrogate the doctrine. Nevertheless there was an absolute outside limitation beyond which the judiciary could not require exhaustion whereby any remedy which would require proceedings exceeding four months duration could not be demanded. *Detroy* v. *American Guild of Variety Artists*, 286 F.2d 75 (2nd Cir., 1961) cert. den. 366 U.S. 929. The Court in *Detroy, supra*, went on to state at p. 78:

> "The statute provides that any member of a labor organization 'may be required' to exhaust the internal union remedies, not that he 'must' or 'is required to' exhaust them. * * * We therefore construe the statute to mean that a member of a labor union who attempts to institute proceedings before a court or an administrative agency may be required *by that court or agency* to exhaust internal remedies of less than four months' duration before invoking outside assistance."

See also *Lavender* v. *United Mine Workers of America*, 285 F. Supp. 869 (S.D.W.Va., 1968):

> "Even under the assumption that the doctrine [exhaustion of intra-union remedies] is applicable to the facts presented, the exhaustion of internal remedies is not in all cases mandatory but may be dispensed with if in the exercise of its discretion the court determines that the pursuit of available remedies is not required or would prove futile. Simmons v. Avisco Local 713, Textile Workers Union of America, 350 F.2d 1012 (4th Cir., 1965); United Brotherhood of Carpenters and Joiners of America v. Brown, 343 F.2d 872 (10th Cir., 1965)." at p. 872.

This Court agrees with plaintiff's contention that to press any internal remedies which may exist would prove futile and meaningless. Further, the Court by virtue of its discretion in this matter does not deem the exhaustion of intra-union remedies necessary or pre-requisite to invoking its jurisdiction. Accordingly, the defendants' assertion that this Court is without jurisdiction for plaintiff's failure to exhaust intra-union remedies is rejected in order that an expeditious adjudication of this matter can be had.

Defendants further contend that this Court lacks jurisdiction because the subject matter of this action is within the exclusive jurisdiction of the National Labor Relations Board. This assertion is easily disposed of by the following:

Smith v. *Evening News Assn.*, 371 U.S. 195 (1962);

> "We likewise reject that [pre-emption] doctrine [of the Garmon case] here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by § 301 but it is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301." at p. 197.

and, *Vaca* v. *Sipes*, 386 U.S. 171 (1967);

> "This pre-emption doctrine, however, has never been rigidly applied to cases where it could not fairly be inferred that Congress intended exclusive jurisdiction to lie with the N.L.R.B. Congress itself has carved out exceptions to the Board's exclusive jurisdiction: • • •; § 301 of that Act [Labor Management Relations Act, 1947], 61 Stat. 156, 29 U.S.C. § 185, permits suits for breach of a collective bargaining agreement regardless of whether the particular breach is also an unfair labor practice within the jurisdiction of the Board • • •" at p. 179-80.

It is obvious by reference to the above cited authorities that the federal courts should maintain jurisdiction over suits brought under § 301, notwithstanding the fact that the acts complained of may also be unfair labor practices within the jurisdiction of the National Labor Relations Board. This ground for dismissal for lack of jurisdiction asserted by defendants is, therefore, likewise rejected.

The plaintiff also invokes the provisions of Section 301 of the National Labor Relations Act, which provides, in pertinent part, as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (29 U.S.C. § 185(a)).

The term "contract" as used in § 301(a) is not limited to collective bargaining agreements between employers and unions. It applies also to agreements between employers and labor organizations which seriously and directly affect the employment relationship. It is clear from the summary of the complaint herein that at least a prima facie showing has been made of an existing contract between the Local and

International, upon which is founded a basis for determining Section 301 jurisdiction.

The Taft-Hartley Act of which Section 301 is a part discloses a congressional policy to avoid intervention in internal union affairs. *N.L.R.B.* v. *Allis Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *Scofield* v. *N.L.R.B.*, 394 U.S. 423 (1969).

In *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 (1957), the Supreme Court held that the federal courts should take a broad view of § 301(a) jurisdiction and should fashion a body of federal substantive law from the policy of the national labor laws. Although that case presented no real jurisdictional problem since the controversy was between an "employer" and a "labor organization", as compared with the case at bar, which concerns an "International" and a "Local" labor union, it is significant in that it invokes a rule of liberalism in construing the dictates of § 301(a) jurisdiction.

Accordingly, this Court concurs with the result reached in *Parks* v. *International Brotherhood of Electrical Workers*, 314 F.2d 886 (4th Cir., 1963) cert. den. 372 U.S. 976 (1963), affirming 203 F. Supp. 288 (D.C. Md., 1962), which interpreted the decision in *Lincoln Mills, supra*, as a mandate for the literal construction of the "between any such labor organizations" clause. That decision held that the District Court had jurisdiction in a suit by a local union against an International union for an injunction requiring the International to restore the revoked charter of the local. This Court is obligated to recognize *Parks, supra*, as controlling on this issue.

In disposing of the jurisdictional question under § 301(a) the Court in *Parks* had this to say at p. 916:

> "• • • Moreover in interpreting the 'between an employer and a labor organization' clause, the Supreme Court has consistently favored the broad view of sec-

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> tion 301(a) jurisdiction. [N. 51, see Textile Workers v. Lincoln Mills, 353 U.S. 448 • • •]
>
> In the absence of a clear expression of congressional intention to the contrary, we consider it permissible to adopt the more literal interpretation of the 'between any such labor organizations' clause—the interpretation that would support jurisdiction in this case."

To the same effect as in *Parks* is the decision in *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17 (1962); see also the majority opinion in *Local 33, International Hod Carriers, etc.* v. *Mason Tenders, etc.*, 291 F.2d 496 (1961).

Having so decided the jurisdictional question presented by § 301, this Court must recognize jurisdiction over the International. However, it is significant, as previously indicated, that a valid subsisting contract between the parties is necessary in order to predicate jurisdiction upon § 301.

> "Suits for *violation* of *contracts* between an employer and a labor organization • • • or between any such labor organizations, may be brought in any district court of the United States • • •" 29 U.S.C. § 185(a). (emphasis added).

Among the numerous defendants named in the complaint are various employers of members of Local 701, the collective bargaining agent of the employers, various locals in the metropolitan area, and the National Over-the-Road and City Cartage Policy Negotiating Committee. No one of these defendants is a party to a contract with 701 which affects the rights and privileges sought to be protected by the instant suit.

Although it is undeniable that the employers and their bargaining agent are parties to a contract with Local 701, that contract is one of collective bargaining, the terms of which have not been breached. There is no existing contract at all between Local 701 and various metropolitan locals nor the National Over-the-Road and City Cartage Negotiating Committee. The only contract which 701

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entered into preserving the rights which it alleges have now been abridged is the contract which may exist with the International as set forth in Count I of the complaint. This alleged contract has formed the basis for finding jurisdiction under § 301 and it is only the terms of this contract and its guarantees which may have been breached. None of the other defendants ever contracted to preserve said rights and even if these co-defendants acted in concert with the International, in order to deprive Local 701 of its rights under that contract, there still would not be a contractual relationship existing between these defendants and Local 701 upon which § 301 jurisdiction could be founded.

In conformity with the views expressed above, this action is dismissed as to all defendants who have so moved and to all others by this Court *sua sponte,* except for the defendant, International, over whom the Court retains jurisdiction by virtue of § 301. Therefore, the parties to this action have been reduced to the claimant, Local 701 and the defendant, International.

At this point there remains but one issue to be decided. The plaintiff in its exhaustive jurisdictional claims included a common law charge of conspiracy, fraud and tort. Ordinarily, with the absence of diversity jurisdiction these claims would necessarily fall since they are not predicated on any particular statutory grant of jurisdiction. Claims of this sort are commonly designated state claims. Plaintiff contends that this Court should maintain jurisdiction over these claims through the exercise of pendent jurisdiction.

Plaintiff relies, in support of its contention that pendent jurisdiction should be exercised, upon *United Mine Workers* v. *Gibbs,* 383 U.S. 715 (1966). *Gibbs, supra,* is recognized as controlling on the issue of pendent jurisdiction, and it states at pp. 725-26:

> "The state and federal claims *must derive from a common nucleus of operative fact.* But if, considered without regard to their federal or state character, a plaintiffs claims are such that he would ordinarily be

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> expected to try them all in one judicial proceeding, then assuming *substantiality of the federal issues*, there is *power* in federal courts to hear the whole. • • • [P]endent jurisdiction is a doctrine of discretion • • • Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims • • • " (emphasis added).

The exercise of pendent jurisdiction requires that the federal claim be "substantial" and that the state and federal claims must derive from "a common nucleus of operative fact." It therefore is within the discretion of this Court to rule on pendent jurisdiction guided by the rules laid down in *Gibbs*. This Court finds that the first requirement has already been satisfied since previous discussion has disclosed substantiality of the § 301 claim sufficient to confer jurisdiction over the International. Further, the common law claims derive from the same nucleus of operative fact as the claims under § 301. Consequently, the Court, in its discretion, will exercise pendent jurisdiction over the common law charge as it relates to the defendant, International.

In summary, these motions have produced the following:

(1) International is the sole remaining defendant to this action, the complaint being dismissed as to all others.

(2) Count II of the Complaint is stricken.

(3) Count III of the Complaint is stricken.

(4) Count IV of the Complaint is stricken, since it is merely repetitious of Count I in an attempt to secure jurisdiction through all or any of the various statutes cited.

An Order in conformity with the opinion herein expressed may be presented.

REYNIER J. WORTENDYKE, JR.
United States Senior
District Judge

APPENDIX D

Excerpts From 1966-71 International Union Constitution Pertinent to Negotiation of Agreements and Internal Remedies

(Plaintiffs' Exhibit FF)

Article III, Section 1

CONVENTIONS

The International Convention shall be the supreme governing authority of the International Union and shall have the plenary power to regulate and direct the policies, affairs and organization of the International Union.

The Convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be held every five (5) years at such time and place as may be designated by the General Executive Board upon the recommendation of the General President. The General Secretary-Treasurer shall issue a call for the Convention not less than ninety (90) calendar days prior to the date of meeting, unless otherwise directed by the General Executive Board. In the event of an emergency as determined by the General Executive Board which prevents the holding of a Convention in accordance with the provisions herein set forth, the same shall be held as soon thereafter as possible, in accordance with the intent and spirit of this Constitution.

Article IV, Section 1(a)

INTERNATIONAL OFFICERS

The Officers of the International Brotherhood of Teamsters shall consist of a General President, General Secretary-Treasurer, General Vice President, twelve (12) Vice Presidents, and three (3) Trustees. The General President, the General Secretary-Treasurer, the General Vice President and the twelve (12) Vice Presidents shall constitute the General Executive Board.

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Article VI, Section 1(b)

GENERAL DUTIES

• • • • •

The General President shall have general supervision over the affairs of the International Union, which shall be conducted in accordance with the Constitution and subject at all times to review and approval of the General Executive Board.

Article VI, Section 2(a)

JUDICIAL POWERS

The General President shall have authority to interpret the Constitution and laws of the International Union and to decide all questions of law thereunder between meetings of the General Executive Board, and shall have authority, unless some other procedure is expressly provided in this Constitution, to settle and determine all grievances and disputes submitted to him by Joint Councils, Local Unions and other subordinate bodies or members, between meetings of the General Executive Board, all subject to appeal to the General Executive Board, and, thereafter to the next Convention in the manner and to the extent prescribed in this Constitution. When any action is taken as provided herein between meetings of the General Executive Board such action shall be reported to the next meeting of the General Executive Board for its approval, reversal or modification, if an appeal has been taken.

Article IX, Section 1

GENERAL

Such powers, duties and authority as are not otherwise delegated to the General President and General Secretary-Treasurer of the International Union shall be exercised, acted upon, and determined by the General Executive Board. The General Executive Board shall have the au-

thority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention. The General Executive Board shall have governing authority over the International Union and its subordinate bodies to the end of upholding the laws and policies of the Brotherhood as expressed in this Constitution.

Article XII, Section 11(d)

WAGE SCALES AND APPROVAL THEREOF

* * * * *

In such instances where the General Executive Board receives information of the proposed execution of a contract which affects the interests of either the members involved or any other members of the International Union by providing working conditions or earnings less than those prevailing in the area, it shall have the power to hold a hearing on such matters and may, by a majority vote, direct the subordinate body to refrain from executing such agreement, and in such circumstances no proposed agreement shall become valid and binding unless specifically approved by the General Executive Board. When such action is contemplated or taken, the employers involved shall be promptly notified of the necessity of specific approval by the General Executive Board before the contract involved may become valid and binding.

The General Executive Board shall also have the power to take such disciplinary action as it deems necessary after proper notice according to this Constitution in those cases where it finds that a subordinate body or its representatives have without good cause executed agreements which adversely affect members of this International Union within the jurisdiction of the particular Joint Council.

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Article XVI, Section 4(a)

AREA, MULTI-AREA OR NATIONAL
COMPANY-WIDE OR INDUSTRY-WIDE CONTRACTS

If a majority of the affiliated Local Unions vote for area, multi-area or national, company-wide or industry-wide negotiations for an area, national, company-wide or industry-wide contract, all involved affiliated Local Unions shall be bound by such vote, must participate in such area, multi-area or national, company-wide or industry-wide bargaining and shall be bound by the contract approved as provided below. Upon completion of negotiations by a Conference, Trade Division, or by any Committee appointed by the General President, subject to the approval of the General Executive Board, to engage in negotiation of an industry, area, multi-area or national or company-wide contract, such contract shall be submitted to the membership covered by said contract proposal for their approval or rejection.

If a majority of the votes cast by Local Union members voting approve such contract it shall become binding and effective upon all Local Unions involved and their members. Local Unions which are parties to such contracts may not withdraw from such bargaining unit except upon six (6) months' notice and for good cause shown to the satisfaction of the appropriate Conference, Trade Division or Committee, and approved by the General Executive Board of the International Union. If any Local Union believes that an area, multi-area or national, company-wide or industry-wide contract proposal will deprive its involved members of better existing conditions of general application to all such involved members of the Local Union it may appeal to the General Executive Board which shall have the final authority to determine whether such alleged better general conditions shall be continued or shall yield to the overall gains of the proposed contract. Unless

mutually agreed to, no Local Union shall suffer any economic loss.

Article XVI, Section 4(b)

In the event any Conference, Trade Division or Committee negotiates a contract which involves, affects or relates to operations of the employer or employees within the jurisdiction of other Conferences, Trade Divisions or Committees, notice of intent to execute such a contract shall be given to the Conference, Trade Divisions, Committees or Local Unions involved in such other jurisdiction who may within ten (10) days thereafter, protest the application of such contract in their area. Failure to file such protest shall be considered a waiver of any objections to such contract, but shall not be considered an acceptance of such contract as a substitute for, or in variance of, existing agreements to which the other Conferences or Local Unions are parties.

In the event of protest, and if the parties cannot adjust the same, the matter shall be submitted to the General Executive Board for its determination, and no such contract shall become finally effective as to such Local Unions as the General Executive Board may determine until the determination by the General Executive Board.

All employers negotiating contracts with Multi-state, Area, Multi-Area or National Conferences, Trade Divisions or Committees established by the General President, subject to approval of the General Executive Board, or with subordinate bodies, shall be provided with a copy of this Article at the time negotiations are started so they will have notice of the approval necessary for a binding contract. All provisions of Article XVI, Section 4(a) and (b) shall be equally applicable to company-wide negotiations and contracts on an area, multi-state, multi-area or national basis.

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The General President, subject to the approval of the General Executive Board, shall have the authority to appoint negotiating committees and establish procedures for the negotiation of area, multi-area or national, company-wide and industry-wide agreements and for the submission of such negotiated agreements to the membership covered by the proposed contract for approval or rejection, and to do all things necessary to implement the enforcement of such agreements and compliance by Local Unions with the provisions of this Article and the procedures established thereunder.

Such negotiating committees shall have the authority, with the approval of the General Executive Board, to conduct contract ratification votes and strike votes on such area, multi-area or national, company-wide, industry-wide, or Local Union basis as the committee shall determine, and in the event the strike is authorized, the said committee shall have the authority, with the approval of the General Executive Board, to direct that the strike be conducted on such area, multi-area or national, company-wide, industry-wide, Local or such other selective basis as the committee shall determine; provided, however, that the results of ratification or rejection votes with respect to national agreements shall be determined on a cumulative basis of all votes cast by all affected voting members in all areas, with a cumulative majority vote necessary for acceptance, and a cumulative two-thirds (⅔) vote necessary for rejection of the final offer and strike authorization as provided in this Constitution. The requirement that the employer's final offer of settlement can be rejected only by two-thirds (⅔) vote shall not apply during a strike.

This Article shall be broadly interpreted to carry out the intent and purpose of permitting national negotiations and national agreements in any industry in which the International Brotherhood of Teamsters has jurisdiction.

Article XIX, Section 12 (a)

EXHAUSTION OF REMEDIES

Every member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency against the International Union, any subordinate body or any officer or employee thereof.

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OPINION BELOW

The judgment order of the Court of Appeals (Pet. App. 1a-2a)* and the opinion of the United States District Court for the District of New Jersey (Pet. App. 4a-22a) are not reported.

* Reference is to Petitioner's Appendix.

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JURISDICTION

The judgment of the Court of Appeals (Pet. App. 1a-2a) was entered on November 17, 1975. A petition for rehearing *en banc* was denied on December 16, 1975 (Pet. App. 3a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there were facts in the record from which the District Courts could have concluded that to require the Respondents to exhaust internal union remedies would be futile; and

2. Whether the District Courts abused their discretion by refusing to encyst upon the Court settlement agreement sued upon, provisions for exhaustion of internal union remedies, where those settlement agreements contained no language whatsoever requiring exhaustion; and

3. Whether the issues presented by the Petition are of public importance.

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STATUTE INVOLVED

This action arose under Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. 185 (Pet. B. 2).*

* Reference is to Petitioner's Brief.

STATEMENT

This litigation arises out of a dispute between the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Petitioner) and Local 701 (Respondent).

Local 701 sued the International for the breach of two separate contracts (Resp. Appendix p. 1a-6a), each entered into a settlement of litigation pending against the International in both State and Federal Courts and before the National Labor Relations Board.

A nine-day trial before the United States District Court for the District of New Jersey resulted in a jury verdict for the Local finding that the International breached both contracts. Local 701 was awarded damages in the full amount claimed.

On November 17, 1975, the Third Circuit Court of Appeals affirmed the District Court verdict and found that the District Court had jurisdiction. A hearing *en banc* was denied on December 16, 1975.

Background

During the period beginning 1952 and ending in 1967, Local 701, although affiliated with the International Union, refused to participate in either nation-wide or area-wide collective bargaining. Indeed, at the time the Local was chartered in 1952 (TR 57:12)* the employees represented by Local 701 were sixty-one cents per hour behind the economic benefits enjoyed by employees represented by the other teamster unions in the New Jersey-New York area.[1]

---

* Trial transcripts page and line.

1. Mr. Coar's testimony (TR 60:5-10) "We had a vast differential in monetary wages. We had less holidays, less vacations. We didn't have an eight-hour workday. So in general it wasn't just a differential in no pension, but there was also differentials in wages and in other fringe benefit areas such as pension and welfare."

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With long strikes occurring in 1954, the Local was able to close this differential. However, the local's relationship with all teamster unions in the New Jersey-New York area during this period of time was hostile as these locals tried to break Local 701's strikes.[2]

By 1967, bargaining entirely on its own, and without any support from its sister teamster unions, or from its own International (except for strike benefits which were paid for one strike), Local 701 was able to negotiate certain benefits superior to those enjoyed by other teamster locals in the New Jersey-New York area. In particular, these superior benefits consisted of an additional ten cents per hour which was to be paid into Local 701's Pension Plan.

Then, on September 30, 1966, General President Hoffa ordered Local 701 to sign a power of attorney (P. Ex. "VV") which would have constituted the International the sole collective bargaining agent for the employees formerly represented by Local 701 (See TR 61:25; 64:20-21; 67:15-25; 68:1-6). At that time Local 701 refused to sign the power of attorney forms and instead instituted a suit in the New Jersey Court system, challenging *inter alia* the validity of the constitutional provisions by which the International sought to bind Local 701 to nation-wide and area collective bargaining, and challenging those provisions of Article XVI Sec. (a), which would have required

2. Mr. Coar's testimony (TR 293:19-25) "In 1954 at the anniversary date of the contract, that being August 31st, on September 1 a strike started. With the exception of one teamster union, local 617, all other teamster unions in this New York area who had terminals in Jersey City, in Paterson, in Hudson County and in New York their men came into the New Brunswick Area where our men were on strike and performed the very pick-ups and deliveries for (TR 294:1-9) those same companies that our men were striking. 617 did support us and I testified to that in Shines Express in Jersey City. They honored our picket line, they would not send their men into Trenton and they respected our pickets at the Jersey City Terminal. The other unions came in, came into New Brunswick to do the work that we performed and broke our system lines pickets. They broke our strike because our men were on strike in New Brunswick." Mr. Coar's testimony was uncontradicted in the record.

Local 701 to apply to the General Area Board for protection of its "better conditions."

The Local alleged that it had certain autonomous rights by reason of special contracts entered into by and between it and the International Union. The Complaint specifically objected to the so-called intra-union remedy provided for by Article XVI, Sec. 4A, in that said "intra-union remedy (sic!)" would transfer the decisional process as to whether a proposed contract will "deprive its involved members of particular existing conditions of general application" from the members of Local 701 to the General Executive Board of the International Union. This suit ended in a Court Approved settlement agreement entitled "Memorandum of Understanding between Local 701 and the International Union" executed on October 10, 1970 (Resp. App. p. 1a)* by virtue of which Local 701 maintained its ten cent differential advantage over the other New Jersey-New York unions, and the International agreed not to "execute an agreement on behalf of Local 701 which will not contain all of the provisions contained in this rider" (5(a) of Resp. App. p. 3a). For its part Local 701 agreed to withdraw all litigation pending in the various state and federal courts and before the National Labor Relations Board (See 5(b) of Resp. App. p. 3a).

A mere glance at the aforesaid settlement agreement indicates that no provision was made therein for exhaustion of any intra-union remedies, or resort to the Union constitutional procedures challenged in the settled complaint.[3] In the period from 1967 to 1970, and after strikes approved by the International Union, Local 701 employees continued to enjoy the additional ten cent contribution into their Pension Plan.

* Reference is to Respondent's Appendix.

3. Petitioner now resurrects the same constitutional provisions and requests this Court to require Respondent to exhaust these same remedies abandoned in the settlement agreement.

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1970 negotiations and the second settlement agreement between Local 701 and the International Union

When national and area collective bargaining agreements came up for renegotiations in 1970, the International took the position that its 1967 court settlement commitments had expired and sought once again to compel Local 701 to submit to National and Area negotiations. The Local, as we shall see, successfully resisted these claims (P. Ex. "K", P. Ex. "L"; P. Ex. "N"; P. Ex. "O"; P. Ex. "S"; P. Ex. "T"; P. Ex. "V").*

On January 7, 1970, Local 701 learned that the Eastern Conference of Teamsters (that branch of the International representing locals from the New England States down to Florida, including all of the Eastern Seaboard States), (TR 56:17-25; See TR 112:22, TR 113:18-25), and the Policy Committee which reports to the International, " at the top level" (TR 57:4-8), had submitted a demand to the employer groups for equalization of contributions on behalf of Local 701 and all the other local unions involved (P. Ex. "EEE-1").

On January 12, 1970, the International wrote to the President of Local requesting copies of contracts between the Local "covering over-the-road, city cartage and/or dock operations" (P. Ex. "K"). The same letter instructed the Local not to renew any such contracts without the prior approval of the International, and states that, "the Local Union and the involved Employers shall become parties to the National Master Freight Agreement, and the New Jersey-New York Supplement thereto, if the work involved comes within the operations covered by those Agreements." In this connection, the attention of the Local was called to the provisions of Article XII, Section 11(a), (b), (c) and (d) and Article XVI, Section 4, of the International Constitution (P. Ex. "K"). To the fore-

* References are to exhibits at trial.

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going letter from International the Local responded by letter dated January 22, 1970 (P. Ex. "L"), which stated that:

> ". . . it was clearly established by representatives of the International Union our attorneys and representatives of Local 701 that in fact, there was no contract and to date, none has been totally compiled by the International Union on our behalf covering those points ratified by our members under the mail referendum as well as those points protected under the memorandum of Settlement approved by Judge Matthews."
>
> ". . . Local 701 cannot tell any employer that they must become parties to the National Master Freight Agreement or the New York-New Jersey Supplement thereto. We have been advised by our attorneys in view of the course of events which took place some three years ago when the same question was raised, that serious consequences, along with damages, could flow to Local 701 particularly in view of the fact that our membership has mandated certain instructions to the Executive Board of this Local Union."

The same letter expressed emphatic disapproval of the content of the letter from the International which had evoked that response. The letter of February 3, 1970 (P. Ex. "N") from the International to the Local warned that the International was obliged to assure compliance with its Constitution, and that, if the members of the Local were permitted to vote to override those provisions, the Local President would be held "responsible if further action is required by the International . . ." The correspondence between the Local and International became thereafter progressively recriminatory.

Ultimately, counsel for the Local confirmed by letter that which had been agreed upon with International by way of a telephone conversation, that any wage increase

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negotiated by International "be, in the case of Local 701, applied on top of the existing wage levels"; that any increases negotiated by International with respect to pension or welfare contributions shall be in the case of Local 701 "paid on top of the existing Local 701 welfare and pension contribution rate"; that any additional monies made available from the Cost of Living Index should "be applied uniformly throughout the entire Country"; and that "the agreement . . . between the International Union and Local 701, dated October 13, 1967, does not have to be renegotiated since it is in full force and effect and, therefore, automatically applied at this time" (P. Ex. "W"). At, or about the same time, in view of the increasing enmity between the Local and the International, a settlement conference was held in Washington between the General Vice President of the Internatioal Unoin, Vice President Trerotola and Walter Shea, Executive Assistant to the General Vice President (TR 150: 24-25). That conference ended with the understanding by Local 701 that the International was "going to honor the contract that we relied upon . . . I am speaking of the 1967 agreement that was arrived at before the Superior Court Judge Matthews" (TR 150:2-25).

The General Vice President of International advised the President of the Local (P. Ex. "X") that the letter from the attorney for the Local dated March 13, 1970 adequately summarized the contents of the General Vice President's letter on the application of the increases to be negotiated for the new agreement "including the application of the proceeds of the cost of living article during the life of the agreement." The Local was therefore requested to countersign the General Vice President's letter and return it to him. The Local considered this letter from International to be a conditional response to the agreement as set forth in Local's letter of March 13,

1970, refused to countersign said letter and instituted suit in the U.S. District Court.[4]

This action was dismissed by the Local in consequence of various negotiation conferences which resulted in International's unconditional agreement to the provisions of Local's March 13, 1970 letter as evidenced by a telegram from the General Vice President to the President of the Local, dated March 18, 1970, confirming that:

> "(1) Mr. Friedland's letter of March 13, 1970 represents our complete agreement as to the matters contained therein;
>
> (2) Our understanding does not in any way apply to garage, maintenance or clerical employees. This telegram is being sent pursuant to an agreement reached during a telephone conference call on March 18, 1970, in which you, Mr. Jacob Friedland and Mr. Bartosic participated that no later than March 30, 1970 Local 701 will dismiss the lawsuit which it has instituted against the International Union due to a misunderstanding as to the status of negotiations."

Upon receipt of the aforesaid telegram, Local 701 withdrew its lawsuit, withdrew all its demands upon the employers and the International that it be permitted to negotiate its own collective bargaining agreements and relied completely upon the International, the National Over-the-Road ard City Cartage Policy Negotiating Committee, its sister teamster locals, and the other defendants herein, in the negotiations of new collective bargaining Master Area Supplements and Riders.

4. Local 701's position, *inter alia*, was that the 1967 settlement agreement had not expired, automatically applied, and contained guarantees that had to be incorporated in the forthcoming contract and that ". . . the legal recourse pursued by our members and this local union three years ago is clearly apart from the I.B.T. Constitution . . ." (P. Ex. "O").

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The Local advised the Middlesex Freight Carriers Association on March 23, 1970, that the dispute between th International and the Local "has been completely resolved and a full understanding reached" (P. Ex. "AA"). However, not even that acknowledgment eliminated the differences btween the Local and the International. On April 7, 1970, the International informed the Local that "an Agreement had been reached on monetary items and left only area supplements to be completed . . ." Two days later, according to the uncontradicted evidence, Internatinoal Vice President, Samuel Provenzano, President of Local 560, and a representative of the International, notified the President of Local 701 that the latter would have to agree to accept less of a monetary package than other locals in the New Jersey-New York area were receiving and that all New Jersey-New York locals had combined to oppose Local 701, and would not support in the future any legitimate picket lines and would strike any employer who agreed to give Local 701 the same wage increases and pension and welfare increases being negotiated by other Teamsters Locals in the North Jersey area. The fat was again in the fire, and Local 701 responded in its "confidential" hand-delivered letter of April 19, 1970 (P. Ex. "DD"). That letter was addressed "To All North Jersey-Metropolitan Area Freight Locals Att: Mr. Sam Provenzano, Spokesman," and in that letter the Local President stated in part that:

> "Our members will not take less for your benefit! As far as any help, let the record be clear, as I told you, you never gave us any help and in fact, you ran down a legitimate 'sanctioned' picket line involving Transcon!
>
> ". . . I want to respond to your implied coercement to make our members take less than what the International has already agreed to protect for us. We

> will not depart or give up the independently negotiated 10¢ which we got for ourselves . . . without your aid, or anybody else's for the matter."

A day or two after the aforesaid letter was sent, Local 701's President, Mr. Coar, received a call from International Vice President Joe Trerotola, who requested that he come to Washington (TR 191:17-21). Coar's testimony as to the conversation, which was uncontradicted, was as follows:

> "A. Joe T said to me: 'Bob, you know, we're all teamsters.'
>
> And I said, 'That's correct, that's why I'm here.'
>
> He said, "I want to talk to you about the flare up you had with Sammy. Why don't you go along with us? Why don't you back up and you'll get our help every time you need it.'
>
> And I said: 'Joe, the members of Local 701 authorized me their spokesman to protect the contract with the National Union and their differential. I can't go over their heads. You're asking me to sell them out.'
>
> And I told him under no uncertain terms that I would not give up my position regardless of what Sammy done or what the committee done.
>
> And he said to me: 'Well, I'm telling you as a vice president you either back up or you'll never get our help. I'll never endorse one of your slates or approve any of your out of work benefits. 'Now, Bob . . .' and this is Trerotola '. . . I want to be conciliatory.'
>
> I said: 'How can I be conciliatory to you, Joe when you're telling me you're trying to kill the Local Union I represent?' (TR 192:10-25; TR 194:1-6).
>
> "At the conclusion of the luncheon Joe said: 'Well, you understand my position as International Vice

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> President, I got to do it. You're causing a lot of trouble and I want you to know what's going to happen if you don't back up.'
>
> I said: 'Joe T. I respect your position; you work for the International. I work for over three thousand members.'
>
> And he paid the lunch check. That was the end of the conversation as I recalled it." (TR 193:20-25; TR 194:1-2).

On April 22, 1970, a meeting was held in Washington, D.C. at the International Headquarters and in General Vice President Fitzsimmon's conference room. Various vice presidents of the International were present and participated at the meeting as well as attorneys for the International Union. (See TR 307:19-25; 308:1-25; 231: 3-25; 356:6-13; 357:1-17; 362:5-11; 366:13-17; 367:5-23; 372:13-16; 373:1-15; 376:10-23; 378:P390 inclusive; 393: 23-395:20 inclusive; 492:6-25; 493:1-8, 25; 494:1-21; 495:1-25; 496:2; 497:3-4, 9-14, 21-23; 505:14-25; 506:1-5; 513:20-25; 514:1-14). Representatives of the employer groups were also present. Local 701 was not present, nor invited. The meeting ended with an agreement granting an additional ten cents to every other New Jersey-New York teamster local with an agreement that Local 701 *would not get* the ten cents. (This agreement between the Unions and employers was ultimately reduced to writing. (P. Ex. "EEE-2") At trial Petitioner introduced no testimony whatsoever to contradict these occurrences. Indeed, Petitioner maintained the pretense that it had not participated in, nor had anything to do with, what it contended was the independent action of the New Jersey-New York locals. The jury found against Petitioner upon that issue, and Respondent has not appealed from that finding. Nor does Petitioner contest the jury's finding that the International's action constituted a breach of the

two separate settlement contracts entered into between the Local and the International. Its Petition is based solely upon the contention that the Local was required to exhaust remedies provided in the International constitution, notwithstanding the fact that neither settlement agreement contains one word about exhaustion.

Introduction to Argument

Our argument will be directed to convince this Court that both contracts were entered into as settlement of litigation in State and Federal Courts and that Petitioner's attempt to encyst upon these contracts the very same constitutional provisions which were challenged by the settled litigation is in reality a masked attempt to vitiate the settlement agreements. The record of the case below will demonstrate that these contracts were intended to be effective without resort to the normal union remedies which Petitioner seeks now, some ten years later, to cause us to revert to. We shall demonstrate further that there were ample facts upon the record from which at least two separate District Court Judges properly concluded that to require Respondent to exhaust internal union remedies would be futile.

Finally, we observe that the present case is *sui generis* arising from a unique factual pattern which is not likely to arise again and is consequently not of public importance.

ARGUMENT

Point I

There were facts in the record from which the District Courts did conclude that to require the respondents to exhaust internal remedies would be futile.

The International bases its Petition for a Writ of Certiorari upon an alleged abuse of discretion by the District Court in refusing to require the Respondent to exhaust internal union remedies. Its Petition (Pet. B 17) states that

> "There was no factual showing whatsoever in support of a claim of futility or other excuse for failure to exhaust internal remedies."

This statement, to put it simply and bluntly, is an outright misstatement of the record below. There was substantial uncontradicted evidence [5] from which the District Courts properly concluded that exhaustion of internal union remedies would be futile. (Trial Exhibits "D", "X", "W", "K", "L", "N", "O", "S", "Y", "V": TR 307:19-25; TW 308: 1-25; RE 321:3-5; TR 356:6-13; TR 357-1-17; TR 362:5-11; TR 366:13-17; TR 367:5-23; TR 372:13-16; TR 373:1-15; TR 376:10-23; TR 378-390 inclusive; TR 393:23-RE 395: 20 inclusive; TR 492:6-25; TR 493:1-8, 25; TR 494:1-21; TR 495:1-25; TR 496:1; TR 497:3-4, 9-14, 21-23; TR 505: 14-25; TR 506:1-5; TR 513:20-25; TR 514:1-14; TR 309: 5-9; TR 374:10-18; TR 376:10-23; 378-390 inclusive; 371: 6-25; 372:13-16; 373:1-15; 374:10-18; 375:15-21; 393:23-25; 394:1-25; 395:1-20; 500:11-25; 501:1-9; 502:1-17; 667:3-22).

5. The International made no effort whatsoever to introduce any evidence to contradict the Local's assertions as to futility other than its naked and otherwise unsupported contention that the General Executive Board could have ruled otherwise.

A general description of that evidence follows:

1. A Verified Complaint containing paragraphs 51, 55, 58 and 59 raising the issue of bias and asserting that the International could not, and would not, redress violations of its own constitution; and

2. The Affidavit of Robert A. Kortenhaus read into the record before Judge Wortendyke (Resp. App. p. 7a-11a).

3. A demonstration of a long lasting enmity between the International and Local 701 established initially through documentation and later through testimony at trial; and

4. Overwhelming and uncontradicted evidence establishing the direct participation of the International in the breach of its contracts; [6] and

5. The International in its Answer to the Complaint ruled on every issue adversely to the Local and issued orders directing the Local to give up its position which the Local strenuously resisted.

There are two rulings made by the District Court below upon exhaustion of remedies. First, Judge Wortendyke's conclusion upon the original Motion (Petitioner's App. 15a-17a); and the second, Judge Lacey's refusal to dismiss for exhaustion upon denying judgment n. o. v. on the record. The record before Judge Wortendyke consisted of a Verified Complaint, unusual in nature primarily because it incorporated as exhibits practically all of the documentary evidence actually introduced at trial. An examination of Judge Wortendyke's opinion, which contains a thorough analysis of that documentary evidence,

6. Upon appeal the International admitted breach of its contracts and participation in the breach, though at trial the International denied breaching its contracts and denied participating in the breach. The International has not once, since the verdict or before, taken any action whatsoever to remedy what is now a conceded breach of its contracts with the Local.

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should, in and of itself, be sufficient to dispose of Petitioner's unstated inference that Judge Wortendyke was "operating in a vacuum." That record demonstrated that the International, through its General Council, members of the Board of the Eastern Conference of Teamsters and its National Negotiating Committee, authorized and participated in the negotiations which resulted in the elimination of Local 701's differential, and that when its activity was discovered by the Local it launched a "cover up" operation.[7] The final agreement which constituted the breach, was an equalization rider which was approved by the International pursuant to the provisions of the National Master Freight Agreement, and was executed in the office of the International President's conference room (TR 309: 5-9; 374:10-18; 376:10-23; 378-390 inclusive). Indeed, International Vice President Calabrese stated the International's stand at a meeting of Middlesex Motor Freight Carriers Association to wit: Local 701 would be bound to the negotiations and riders which eliminated Local 701's ten cents differential advantage (TR 393-395:20 inclusive; TR 500-502 inclusive). To sum up, there was substantial evidence from which the Court below could have, as it

7. The record before Judge Wortendyke, as noted, consisted primarily of documentary evidence. In addition the allegations of the Complaint were supported by Affidavit. Furthermore there was read into the record the Affidavit of one of the employer members of the negotiation committee which showed the pervasive activity of the International and the breach of its contracts with the Local. A brief summary of these facts demonstrated:

(a) That all of the negotiations which resulted in the breach of Local 701's contracts were conducted under the authorization of, and pursuant to, the direction of the International.

(b) That there was direct involvement by a substantial number of the International officers and representatives and the breach of the Court settlement contracts to wit:

Several International Vice Presidents; the presidents of at least two joint councils of teamsters; the President of the International, Frank Fitzsimmons; members of the International President's staff; the International's attorneys, including its general and house counsel.

All of the aforesaid individuals participated in the various acts constituting a breach of the Court settlement agreements and participated and caused the damages sustained by the Respondent. (See Transcript references at Respondent's Brief; page 16.)

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did, conclude that to require the Local to exhaust union remedies to protect its ten cents differential advantage would have been futile. The International, in short, through every agency at its command, had exerted all of its power and authority to eliminate Local 701's ten cents differential advantage and, indeed, succeeded in its efforts. In view of the breach of its contracts, the only problem remaining was to compensate the Local for its loss in money damages.

The Third Circuit relying upon its decision in *Semancik v. U. M. W.*, 466 F.2d 144, 151 (3 Cir., 1972) held that ". . . where the internal appeals structure is 'controlled by those to whom the plaintiff is opposed', exhaustion has been deemed futile and contrary to the purposes of the LMRDA," citing also *Burke v. International Brotherhood of Boilermakers, etc.*, 417 F.2d 1063 (9 Cir., 1969). The Court also states at p. 151 that "where the union has consistently taken a position opposed to that of the plaintiff and makes no indication that it will alter its views, there is no purpose in requiring an adjudication by the organization," citing *Farowitz v. Associated Musicians of Greater New York, Local* 802, 330 F.2d 999, 1002-03 (2 Cir., 1964). The evidence before the District Courts in exhibits and testimony shows a continuing adversity of the parties over a period of many yeas. The history of this case is replete with enmity on both sides *e.g.*, injunctions against trusteeships, litigation in the State and Federal Courts. The contract that finally resulted was an arm's length settlement agreement negotiated between two adverse, if not hostile parties. As the District Courts below found, under these circumstances, it certainly would be futile to require exhaustion before the party against whom enforcement of the contract is sought.

That brings us to the second holding of the Courts below to wit: That the existence of such internal union

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remedies is not clear. What is clear is that the contracts sued upon do not contain any language whatsoever requiring exhaustion of union remedies. These contracts were designed to set forth the working conditions (monetary, grievance procedures, etc.) which were to be incorporated by the International in any collective bargaining contract negotiated covering Local 701. These contracts would enure to the benefit of all employees in the industries, including employees who were not members of the International Brotherhood of Teamsters, and who have no recourse whatsoever to internal union remedies. An examination of the settlement contracts (Res. App. p. 1a-6a) demonstrates that they contain none of the usual provisions incorporated in a union constitution and that they seek to achieve objectives which are substantially extra-union in nature. The settlement agreements, in short, are not intended to deal with internal union relationships but rather to set forth the conditions of employment under which employees working under the jurisdiction of Local 701 contracts would be employed. They were not designed to magnetically fuse with those provisions of the International Constitution relied upon by the International as purportedly requiring exhaustion.

Point II

The District Courts did not abuse their discretion by refusing to encyst upon the court settlement agreements, provisions for exhaustion of internal union remedies, where those settlement agreements contained no language whatsoever requiring exhaustion.

An examination of both of the Court settlement contracts clearly demonstrates that there is not one single word in either agreement requiring exhaustion of internal union

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remedies (Res. App p. 1a-6a). For this reason alone this Court does not have to reach the issue of whether a suit brought under a union constitution, relating solely to internal union affairs, must be dismissed for failure to exhaust internal union remedies. This suit was not brought under the provisions of the International Constitution and, indeed, is not subject to it. Respondent Local 701 predicated jurisdiction on separate, valid contracts between it and the International, extra-constitutional in nature, wherein the Petitioner agreed in future collective bargaining to protect benefits obtained by Local 701 for employees.[8] Conspicuously absent in these contracts are normal constitutional provisions. The contracts deal with wages and hours and working conditions and do not deal with internal union affairs. In fact, this contract was later incorporated into a collective bargaining agreement in 1970 between Local 701 and the Middlesex Motor Freight Carriers Association. The first paragraph of the contract deals with wages; health, welfare and pension fund contributions; and cost of living—purely collective bargaining items. The second paragraph is a Maintenance of Standards clause where Local 701's superior position will be preserved. The third paragraph deals with grievance procedures available to all employees. The fourth paragraph, which is to be incorporated into any future agreements, deals with the execution of the contract, providing for autonomy of Local 701 over Pension and Welfare Funds, free from the International's control. The fifth paragraph described the *quid pro quo* of the contract. In return for Local 701 withdrawing all litigation, the International will not execute any contract that does not contain any of the aforementioned provisions. Thus, every

8. It is important to emphasize that the benefits of the contract enured to the employees as a group and not just union members *e.g.*, the monetary benefits. This is not a contract relating strictly to internal union procedures, but for the benefit of all employees, many of whom have no recourse to internal union procedures.

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provision with which we are concerned deals with purely collective bargaining items, totally outside the ambit of the constitution. Respondent sued Petitioner for breach of that contract; it is not suing on the union constitution, which covers internal union affairs.[9]

The fact that these extra-constitutional contracts settled litigation where exhaustion was an issue, and where that issue was abandoned in the settlement agreements, vitiates any argument that Respondent was obligated to exhaust any internal union remedies.

Petitioner's allusions to a "grievance" that the Local had with the International is a sad attempt at characterizing the instant suit as a purely internal squabble. This suit was brought on a breach of contract claim by the Local, not on the basis of a grievance. The reaffirmation of this contract by the correspondence of 1970 (P. Ex. "W"; P. Ex. "X"; P. Ex. "Z") again contains no reference to any internal remedies that the parties were contractually bound to pursue prior to recourse to the courts. The agreements sued on herein could have contained alternative remedies to the parties, *e.g.*, mandatory arbitration or other remedies, but do not. For the Court to find that the Local should have exhausted internal remedies under the International Constitution would, in effect, return the parties to their respective positions in Court prior to the 1967 settlement agreement and prior to 1970. In other words, the Local would be forced to begin again its original challenge to the authority of the International. Surely this would cause an outrageous perversion of justice and would deprive the Local of its rights to negotiate a settlement of a dispute with an adverse party.

Also inappropriate is Petitioner's attempt, to term the contract sued upon "an ambiguous agreement . . ." (Pet.

9. Indeed, those claims which were based upon violation of the union constitution were dismissed by Judge Wortendyke (Pet. App., p. 13a-15a).

B p. 15). To the extent that the Court settlement agreements involved intricate matters involved in collective bargaining they constitute the *final settlement* of all such disputes (emphasis added). In reality Petitioner is trying to undo these settlements so that it may now rearrange the relationship between the Local and the International on terms different than those contained in the settlement agreements, and more favorable to the International.

Point III

The present case is *sui generis*, and the issues which it involves are consequently not of public importance.

As must now readily be apparent, the present case involves a unique fact pattern obviously falling well outside of the perimeters of the "usual" exhaustion case. Here, the Local has sued upon Court settlement agreements which are completely silent with respect to the issue of exhaustion. Here the Local has successfully reversed the usual International Union role [10] and has constituted the International its agent, operating under strict instructions as to its authority to negotiate collective bargaining contracts on behalf of the Local. The goal of the settlement agreements was to protect certain better monetary conditions enjoyed by employees working under the jurisdiction of the Local rather than to provide a system of adjusting and governing Local-International internal relations. As previously noted, the contracts sued upon

10. The International is relying upon *the generalized* conception of International-Local relationships in which the International assumes a parent-authorative role. Mr. Justice Holmes long ago observed that "It is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis." *Hyde v. United States*, 225 U.S. 347, 384, 391. For the purpose of this case at least, the record, not the generalized concept, should define the relative relationship of Local 701 and the International.

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were entered into a settlement of litigation challenging those very provisions of the International Constitution now sought to be resurrected as a requirement for exhaustion of union remedies. This is an unusual factual arrangement; and certainly does not provide any guidance to the resolution of internal exhaustion of remedies claims.

In short, the exhaustion issues posed by the unique facts of this case are not likely to occur again, nor would a decision upon the issues likely be of interest to anyone but the litigants.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

FRIEDLAND & FRIEDLAND,

/s/ Jacob Friedland
JACOB FRIEDLAND
Attorney for Respondents

TOOLAN, ROMOND, ABBOTT & DOMENICHETTI,

/s/ John E. Toolan
JOHN E. TOOLAN
Attorney for Respondents

April, 1976

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APPENDICES

APPENDIX "A"

Plaintiff's Exhibit "D"

RIDER TO LOCAL 701 AGREEMENT – MEMORANDUM OF UNDERSTANDING –

Conferences between the International Union and Local 701 were held on October 10 & 11, 1967 for the purpose of settling all existing disputes and litigation between the parties and to settle the terms of the Master Freight Agreement Supplement and Rider as it applies to Local 701. The provisions of this rider shall prevail over the terms of the National Master Freight Agreement and Supplement Agreement only to the extent specifically provided for herein.

The parties have agreed as follows:

1. Economic Items:

Local 701 will receive the following–

A. The general wage adjustment as follows:

November 1, 1967	14¢ per hour
April 1, 1968	15¢ per hour
April 1, 1969	15¢ per hour

B. Additional contributions to Health, Welfare & Pension Funds:

November 1, 1967	2 1/2¢ to Welfare
April 1, 1968	2 1/2¢ to Pension
April 1, 1969	2 1/2¢ to Pension

C. Cost of living adjustment on April 1, 1968 and April 1, 1969 with a maximum of 4 cents for each adjustment. The first adjustment to be for the period 9/1/67 to 4/1/68.

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D. The cost of living adjustment (six cents) to which Local 701 is entitled under the provision of its current Labor Agreement expiring 10/31/67.

2. Maintenance of Standards:

All conditions of employment contained in the current Local 701 Agreement expiring October 31, 1967, relating to wages, hours of work, fringe benefits and local general working conditions, and all established local past practices, providing for better wages, hours and working conditions than those contained in the National Master Freight Agreement and Supplement shall be maintained at not less than the highest standard in effect at the signing of this Agreement. Such better conditions shall prevail notwithstanding the provisions of any other agreement. Any grievance or dispute concerning the aforesaid matters shall be adjusted or processed in accordance with the grievance and arbitration procedures set forth in the Local 701 Agreement expiring October 31, 1967.

3. (a) Grievance Procedure:

All discharge cases shall be processed in accordance with the grievance and arbitration procedures provided for in the Local 701 Collective Bargaining Agreement expiring October 31, 1967.

(b) All other disputes and grievances shall be processed in accordance with the provisions of the National Master Freight Agreement and Supplement except that deadlock cases before the Joint Local Committee shall go directly to the Eastern Conference Joint Area Committee for their consideration and decision. Wherever reference is made in the National Master Freight Agreement or the Supplement, to the Joint Local Committee, it shall, in the case of Local 701, refer to the existing Local 701 Labor Management Panel and shall, to all intents and purposes, act as the Joint Local Committee.

(c) All references to the Joint Area Committee set forth in the Supplement shall not be applicable to Local 701.

(d) Disputes which are settled between employer and Local 701, or through the Joint Local Committee at any stage of the proceedings shall be final and binding on all parties. The International Union, the Local or the employer shall have the right to submit matters involving the interpretation of National Master Freight Agreement or Supplement pursuant to the provisions of said Agreement.

4. Contract Execution:

The International Union has not and will not negotiate any changes in the management or administration of the Welfare and Pension Funds as provided for by the Trust Agreements. The provision of this clause shall be incorporated in any future agreement.

5. (a) Settlement of Litigation:

The International will not execute an Agreement on behalf of Local 701 which will not contain all of the provisions contained in this Rider.

(b) Local 701 will withdraw all litigation now pending in the various Federal and State Courts and before the National Labor Relations Board. This understanding will be read into the record of the case pending before the Superior Court of New Jersey.

DATE: 10/10/67

Approved-International
Brotherhood of Teamsters, etc.

By: /s/ Thomas E. Flynn
THOMAS E. FLYNN

Approved—Local 701—IBT

By: /s/ Robert J. Coar
ROBERT J. COAR
President

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APPENDIX "B"

Plaintiff's Exhibit "W"
David Friedland Letter to
Bartosic—3/13/70

March 13, 1970

Florian J. Bartosic, Esq.
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Bartosic:

This letter will serve to confirm my conversation with you of even date. I have been exploring with you on behalf of Local 701 the general relationship of Local 701 and the International Union with respect to the negotiations of a new collective bargaining agreement. I understand that the International has agreed to the following:

1. That any wage increases negotiated by the International Union as a part of the national or area collective bargaining contracts will be applied to Local 701 and put on top of the current wage rights under the existing Local 701 bargaining agreement. In other words, if the International Union negotiates an increase in wages of 20¢ that 20¢ will be, in the case of Local 701, applied on top of the existing wage levels.

2. Any increases negotiated by the International Union with respect to pension or welfare contributions shall in the case of Local 701 be paid on top of the existing Local 701 welfare and pension contribution rate.

3. Any additional monies which are forthcoming from the Cost of Living Index will be applied uniformly throughout the entire country. In other words,

if the International Union decides to apply monies which are forthcoming from the Cost of Living Index to wages, then such monies will be applied to wages uniformly to all unions throughout the country. The same principle will follow with respect to the application of proceeds of the Cost of Living Index for pension and welfare contributions.

4. The agreement which was entered into by and between the International Union and Local 701, dated October 13, 1967, does not have to be renegotiated since it is in full force and effect and, therefore, automatically applies at this time.

Local 701's major concern is that it not lose any wages, hours or working conditions which are better than those contained in the National Master Freight Agreement and Supplements and further that its membership has the full advantage of all benefits negotiated by the International Union for the forthcoming contract so long as the International Union assures Local 701 that the wages, hours and working condition benefits will be applied uniformly and in the case of economic items, on top of existing wage, pension and welfare contribution levels, I think that a harmonious relationship will exist between Local 701 and the International Union.

Accordingly, if you are in agreement with the statements contained in this letter please have initialed on behalf of the International Union on the extra copy of this letter which I am sending to you for that purpose and I will advise Local 701 to call an immediate membership meeting for the purpose of obtaining authority to comply with the request contained in Mr. Fitzsimmons' letter of February 25, 1970.

I would appreciate an early reply since Local 701 has advised me that it wishes to fully comply with the pro-

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visions of the International Constitution and By-laws, and does not wish to invite disciplinary action by reason of a misunderstanding as to intent. In this regard since your most recent telegram, dated today, requests affirmative action by March 16, 1970 I would appreciate an immediate response prior to that date from you and, accordingly I am sending this letter to you special delivery.

Very truly yours,

FRIEDLAND, SCHNEIDER & FRIEDLAND

By: /s/ David Friedland
DAVID FRIEDLAND

DF:dd
Special Delivery

For the International Brotherhood of Teamsters:

APPENDIX "C"

Affidavit of Robert A. Kortenhaus
United States District Court
District of New Jersey

STATE OF NEW JERSEY)
) SS.
COUNTY OF UNION)

I Robert A. Kortenhaus, of 1371 Chapel Hill, Mountainside, N.J. 07092, having been duly sworn, upon my oath depose and say.

1. I am the Vice-President of Bilkay's Express and Jersey Coast Freight Lines, both of whom have collective bargaining relationships with Local 478 and Local 701 and Local 807 Teamsters (IBT).

2. I was, and am on the New York-New Jersey Supplemental Negotiating Committee.

3. On or about January 7, 1970, and on dates subsequent thereto, we began negotiations for new supplemental agreement with the New Jersey-New York Supplemental Union Negotiation Committee. The following were represented on or attended meetings of the committee: A. Sam Provenzano, president of Local 560; B. Joe Mangan, Local 807; C. Lester Cornnel, Local 816; D. Louis Alenuino, Local 707; E. L. McDermott, Local 641; F. Willie Fanel, Local 617; G. Jimmy Ruffino, Local 445; and H. occasionally a representative of Local 701; and I. Flemming Campbell, a representative of the Eastern Conference of Teamsters and others.

4. On or about the second or third week of negotiations, after various meetings with the I.B.T. International, the Union negotiating committee demanded ten cents equal-

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ization on behalf of Locals 37, 478, 469, 863, 816, 807, 805, 806, 707, 641, 617, 445 282 excluding Local 701.

5. The same union committee through its representatives including Flemming Campbell said that if Local 701 were to receive the additional ten cents to upset the equalization they were trying to obtain by coercion, strike, force or arm-twisting or threat of economic action, that the other unions would want an additional ten cents. If Local 701 were, however, to obtain the additional ten cents through Court action the other Locals would not demand the additional ten cents.

6. I asked to put the above in writing but the union committee refused and said "We have an understanding."

7. On numerous occasions the union negotiating committee threatened economic action against all the employers unless the employers agreed to pay the ten cents to all Locals listed above in Paragraph 4, except Local 701.

8. Because of the economic threats the New York-New Jersey employers' negotiating committee agreed to the ten cents for all Locals except Local 701, at a meeting on Tuesday, April 21, at the Hospitality House.

9. The New York-New Jersey Locals except Local 701 assured the employer committee that if Local 701 struck, they would operate into the territory and not respect picket lines and they would "run them down." Sam Provenzano said they would "run the line, run them down—we stayed still for them over the years while they came to us and they are not going to get more than us."

10. Because of these threats and asurances the New York-New Jersey employer supplemental negotiating committee met on April 19th with the Middlesex Motor Freight Carriers Association and suggested that in view of these

developments, no Local 701 employer should give the additional ten cents, and if they did the New York Locals would want another ten cents in addition.

11. The Middlesex employees group executive committee agreed that they had no recourse but to stand still and do nothing.

12. After this on April 21, 1970, the agreement set forth in paragraph 8 of this affidavit was reached.

13. At the meeting on April 21, 1970, the employers wanted to put the ten cent increase in Article 56 of the supplement, in the increments agreed upon, and at that time Mr. Dominick Calabrese, who is known to me as an International vice-president, refused and said, "We cannot put it in the supplement. We have to put it in a rider because if we put it in the supplement, Coar will get it because of the agreement between Local 701 and the International." He was quite specific and said that he was advised by the International's attorneys that if the ten cents went in a Local rider with each individual employer that Coar wouldn't get the ten cents. At this time the negotiating committees agreed to meet at nine A.M. on April 22, 1970, at the I.B.T. office building, and the attorneys, Louis Brenner, for the employers, and David Previant, of the I.B.T., were to work out the rider language. The meeting was set up with Mr. Previant by Mr. Calabrese, who called him from the room.

14. On April 22, 1970, at the I.B.T. offices in Washington, Mr. Raymond Beagle, who is chairman of the National Negotiating Committee for Trucking Employers, Inc., told the employer group which had arrived to meet with Previant, Calabrese, Joseph Tretolla, that "The meeting is off. Previant told me that Local 701 is filing a conspiracy suit under the Sherman Antitrust Act, and if he participated in the drawing of the Rider he could not de-

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fend the conspiracy, and that the language would have to be worked out between the commitments." The group then adjourned to Mr. Fitzsimmons' conference room and met with Calabrese, Flemming Campbell, Joe Tretolla (who is the International vice-president).

15. Calabrese worked on the language with Lou Brenner for the handling of the ten cents and reviewed the entire supplement agreement as to changes. After the tentative language was agreed to, Calabrese said he wanted to review the Rider with his attorneys. I said, "Previant is next door; get him in here. Are we playing games with each other?" Someone said, "You know they can't bring him in." Calabrese left the room from time to time to confer with counsel. Hugh Bains, who is an International lawyer, came into the room two times.

16. The meeting ended with an agreement at five o'clock granting the ten cents to all Locals but Local 701, in a rider. Local 707 only received seven cents at the same dates in different increments.

17. The memoranda of agreement provides that the ten cents may be allocated by the trustees of the respective funds to either welfare or pension.

18. At time prior to the working out of this agreement the Locals other than Local 701 offered to operate into the jurisdictional territory of Local 701 and handle the freight of the struck carriers through their North Jersey terminals if Local 701 struck.

19. We were told by union negotiating team that the International said that the ten cents should be in the rider and could not be put in Article 56 because of the correspondence between the International and Local 701 and the withdrawal of their, Local 701, suit.

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20. Last night I saw a telegram dated April 24, 1970, PA533, addressed to Robert Coar, president of Local 701, signed by Frank E. Fitzsimmons. It says in part—

"The International Union did not authorize such negotiations nor participate in them. On the contrary, the International Union advised the parties that no strike or threat of strike would be authorized to secure such benefits. Nor has the International Union or the National Negotiating Committee negotiated or authorized the negotiation, of any general monetary benefits over and above the announced, nationally negotiated monetary package by an other unions which are party to the national master freight agreement." For the reasons set forth in this affidavit those statements are not true.

I have read the 8 pages of this my affidavit and I swear that they are true.

/s/ Robert A. Kortenhaus
ROBERT A. KORTENHAUS

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SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1329

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioner*

v.

TEAMSTERS LOCAL 701, *et al.*, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF FOR PETITIONER

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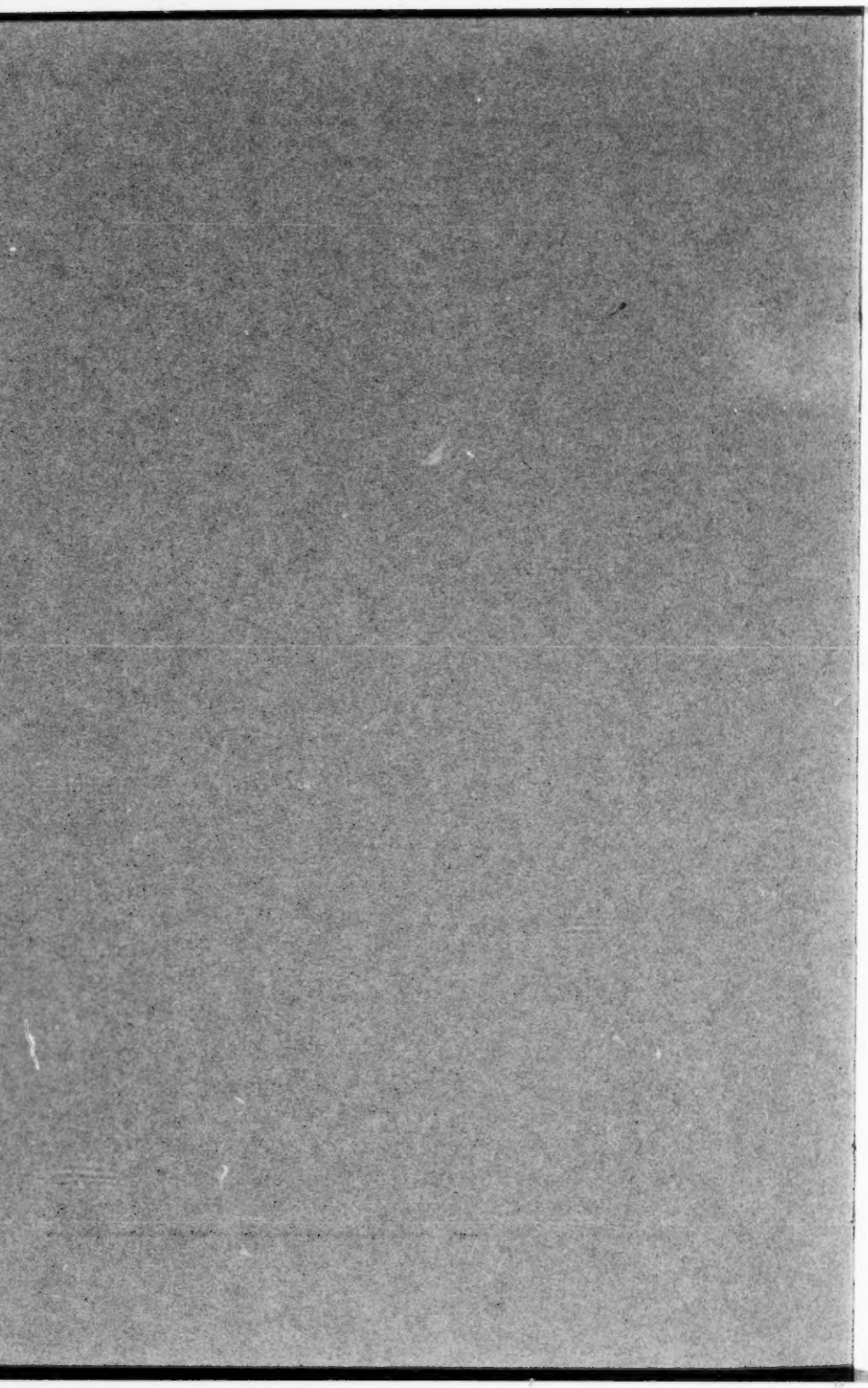

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF FOR PETITIONER

Respondents' version of the internecine conflict between Local 701 and the administration of its International Union serves only to emphasize that the proceedings below intruded deeply into internal union matters. Whatever the facts on the merits of the dispute, the question here is whether those facts were

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properly examined by court and jury in the first instance or whether the internal procedures provided in the International Constitution defining the relationship between the parties should first have been exhausted.[1]

This case has no unique characteristics clouding the important question of the standards for waiver of the exhaustion requirement in such intra-union disputes. The agreement upon which Local 701 sued contains no language relieving it from its normal legal obligation to exhaust internal remedies or from its contractual obligation under Article XIX, Section 12(a) of the International Constitution (which is typical of exhaustion provisions in numerous union constitutions).[2] There is no factual or legal support for

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[1] It is both incorrect and irrelevant for respondents to suggest (Br. in Opp. 17) that the International Union has "admitted" that the judgment against it was proper. The fact that the International appealed, on the merits, only with respect to damages was not a concession that the determination of liability was correct. Rather, the International Union's position in the court of appeals was as follows: "We do not dispute here the sufficiency of this record—as a technical matter of judicial procedure under the Seventh Amendment—to withstand reversal of the jury's verdict on the breach question" (Appellant's Br. 21). "We do not, of course, accept [the jury's finding of breach] and are confident that it would not have been made if the General Executive Board had been given an opportunity to consider the dispute" (Appellant's Reply Br. 4). Our position is now, and always has been, that the interpretation and application of an ambiguous agreement relating to an intra-union dispute should have been referred to the adjudicatory authorities established by the International Constitution before being submitted to a court or jury on the basis of parol evidence.

[2] Indeed, the agreement included an express statement by Local 701 of its adherence to the provisions of the International Constitution (Pet. 10).

respondent's *ipse dixit* that the agreement was "extra-constitutional," and in any event it would be an important question whether the mutual rights and obligations of components of an international union in collective bargaining could ever be "extra-constitutional." Finally, it is inaccurate to state that the court of appeals held that no clear internal remedy was available (Br. in Opp. 19-20); the court expressly based its decision on the single proposition that there was "no abuse of discretion in excusing exhaustion in this case" (Pet. App. 2a).[3]

Respondents point to no facts supporting the proposition that exhaustion would have been futile because of bias in the adjudicatory bodies that would have considered the dispute within the union structure.[4] In substance, respondents simply reiterate their reliance on the fact that the dispute was with "the International," but they do not explain or support the unstated premise that such a dispute is *ipso facto* incapable of resolution by the adjudicatory bodies established by the International Constitution. Such an unprecedented premise would be no more supportable than a contention that a federal court is disqualified from entertaining a dispute against the executive because they are branches of a single government. As

[3] As the petition notes (at 11) Local 701 was specifically reminded of the availability of internal remedies at the time when the dispute arose. The petition describes the ample procedures available for internal resolution of the dispute by the General Executive Board and by the International Convention.

[4] Even if the trial evidence cited by respondents were relevant to the exhaustion question, it was obviously not before the district court at the time of the pretrial ruling on that question. Respondents made no reference to any such evidence when the motion was renewed at the close of the trial.

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the petition makes clear, the General Executive Board and the International Convention are independent of and superior to the administrative officials involved in the dispute and were not tainted by prior involvement in the matter.[5]

The question presented to the jury in this case was—at bottom—whether the dues of all members of the International Union should be taxed in order to give a special benefit to members of one of the 900 constituent local unions. It is hard to conceive of a question more suitable for internal resolution by the representatives of all members who constitute the General Executive Board and the International Convention. Neither court below articulated any rational basis for excusing resort to those internal adjudicatory bodies. If the decision below is allowed to stand, an important fundamental principle of federal labor law will have been drastically undermined.

Respectfully submitted,

James vanR. Springer
Roslyn A. Mazer
Dickstein, Shapiro & Morin
2101 L Street, N.W.
Washington, D. C. 20037
Attorneys for Petitioner

April 1976

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[5] Lest there be confusion, the reference to a "General Council" at Br. in Opp. 18 is plainly a typographical error. The reference should be to the International Union's general *counsel;* there is no such entity as a "General *Council*".